

# The FCA's approach to advancing its objectives 2015

December 2015



## **General Guidance**

### **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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## Abbreviations used in this paper

<b>BoE</b>	Bank of England
<b>CA98</b>	Competition Act 1998
<b>CMA</b>	Competition and Markets Authority
<b>CRD IV</b>	Capital Requirements Directive IV
<b>EA02</b>	Enterprise Act 2002
<b>EBA</b>	European Banking Authority
<b>EEA</b>	European Economic Area
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority
<b>ESAs</b>	European Supervisory Authorities
<b>ESMA</b>	European Securities and Markets Authority
<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>the ombudsman</b>	Financial Ombudsman Service
<b>FPC</b>	Financial Policy Committee
<b>FSA</b>	Financial Services Authority
<b>FSB</b>	Federation of Small Businesses
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>HMT</b>	HM Treasury
<b>LIBOR</b>	London Inter-Bank Offered Rate
<b>MAR</b>	Market Abuse Regulation

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<b>MAS</b>	Money Advice Service
<b>MIR</b>	Market Investigation Reference
<b>MoU</b>	Memorandum of Understanding
<b>MTFs</b>	Multilateral Trading Facilities
<b>NCA's</b>	National Competition Authorities
<b>OFT</b>	Office of Fair Trading
<b>OTC</b>	Over-the-counter
<b>PCBS</b>	Parliamentary Commission on Banking Standards
<b>PIPs</b>	Primary Information Providers
<b>PPI</b>	Payment Protection Insurance
<b>PRA</b>	Prudential Regulation Authority
<b>PSR</b>	Payment Systems Regulator
<b>RIE</b>	Recognised Information Exchanges
<b>SM&amp;CR</b>	Senior Managers and Certification Regime
<b>TCF</b>	Treating Customers Fairly
<b>TFEU</b>	Treaty for the Functioning of the European Union
<b>UKLA</b>	United Kingdom Listing Authority

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# 1. Introduction

## Who we are

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- 1.1** The FCA is the conduct regulator for financial services firms and financial markets in the UK and the prudential regulator for financial services firms not prudentially regulated by the Prudential Regulation Authority.<sup>1</sup> We were established on 1 April 2013,<sup>2</sup> taking over responsibility for conduct and relevant prudential regulation from the Financial Services Authority.
- 1.2** Our strategic objective is to ensure that the relevant markets work well. To advance our strategic objective we have three operational objectives. These are to secure an appropriate degree of protection for consumers, to protect and enhance the integrity of the UK financial system, and to promote effective competition in the interests of consumers.
- 1.3** We are an independent organisation, funded entirely by the firms we regulate. While we are not a Government body, we are accountable to HM Treasury and, through them, to Parliament. Every year we report to HM Treasury on our progress. In turn HM Treasury updates Parliament about our performance against our statutory objectives above and how we have dealt with major regulatory cases.
- 1.4** Regulation has a crucial role to play in the financial services sector. It is a key driver of reform, and a critical means of establishing confidence in financial markets, allowing consumers to have confidence and firms to prosper and support economic growth.
- 1.5** To carry out this crucial role, we take a judgement-based, forward-looking, and pre-emptive approach in assessing potential and emerging risks. This approach helps us to respond promptly and effectively to wrongdoing that threatens our objectives.
- 1.6** We take a proportionate regulatory approach, prioritising our work on the areas that pose the highest risk to our objectives. We must also ensure that any burden or restriction we impose is proportionate to the benefits we expect as a result. As part of this, we generally publish an analysis of the costs and benefits when we consult on a change to our Handbook.
- 1.7** We also adopt a markets-focused approach to regulation, both in our work as a competition regulator and more broadly to deliver regulation that works with the market to improve consumer outcomes. Interventions at the market level are an effective and powerful way of tackling and mitigating problems across a large number of firms, which in turn benefits a large number of consumers.

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1 The PRA is the prudential regulator of banks, building societies, credit unions, insurers and designated investment firms, and is part of the Bank of England.

2 The FCA was created by the Financial Services Act 2012 which amended the Financial Services and Markets Act 2000 (FSMA).

- 1.8** Our regulation is also principles-based. We expect regulated firms to follow our 11 Principles for Businesses<sup>3</sup> and to stick to the spirit as well as the letter of our rules.
- 1.9** We set out to be a consistent and transparent regulator so that we can facilitate scrutiny by consumers, firms and Parliament. We operate as transparently as possible, for example by publishing our Annual Reports and Business Plans, and notices on enforcement actions we take against firms and individuals that we regulate.
- 1.10** Our communications with consumers and industry provide valuable information. For example, we are required by the Financial Services and Markets Act 2000 (FSMA) to consult practitioners and consumers on the extent to which our practices and policies are consistent with our general duties. One of the ways we meet this requirement is through our work with four independent panels which represent and explain the interests of their constituencies to us. These panels are the Financial Services Consumer Panel, the Smaller Business Practitioner Panel, the Markets Practitioner Panel and the Practitioner Panel.
- 1.11** We are an integral part of the UK's wider financial regulation framework. This involves a number of public bodies, each with their own duties and objectives. They include the Prudential Regulation Authority, the Bank of England, the Payment Systems Regulator, the Competition and Markets Authority, the Money Advice Service, the Pensions Regulator, the ombudsman, the Financial Services Compensation Scheme and HM Treasury. We work closely with these public bodies and others to advance our objectives.
- 1.12** The rest of this document explains our approach to advancing our objectives in detail, looking at each in turn.

### **Our strategic objective and our operational objectives**

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- 1.13** Our strategic objective is to ensure that the relevant markets function well.
- 1.14** We have three operational objectives, which are to:
- secure an appropriate degree of protection for consumers
  - protect and enhance the integrity of the UK financial system
  - promote effective competition in the interests of consumers
- 1.15** These mean, for example, that we should ensure that the financial services industry is run with integrity, that firms provide consumers with appropriate products and services, that firms compete to meet consumers' needs with new and better value products, and that consumers can trust that firms have their best interests at heart. We also have a duty to promote effective competition in the interests of consumers when meeting our consumer protection and market integrity objectives.

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3 [www.fca.org.uk/about/operate/principles](http://www.fca.org.uk/about/operate/principles)

### What is this paper for?

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- 1.16** This document provides guidance on how we intend to carry out our statutory responsibilities, and what firms and consumers can expect from us. This includes how we considers the scale and diversity of the different sectors, firms and products we regulate and the wide range of consumers who use them.
- 1.17** We are required by law to give this guidance under the Financial Services and Markets Act 2000 (FSMA).<sup>4</sup>
- 1.18** We have updated this document to include developments since we consulted on it in 2013<sup>5</sup>. These developments include our publication of the FCA's new strategy<sup>6</sup> and our Business Plan 2015/16.

### What do we mean by conduct regulation?

Conduct regulation looks at the way firms carry out their business and treat consumers.

Financial services firms can treat consumers unfairly in a number of ways, such as through opaque and complex charging, bad advice or unfair contract terms. This can happen for a variety of reasons. A firm's business model or culture, for example, might include remuneration policies that encourage poor sales practices. Anti-competitive conduct can harm consumers directly, or may harm other suppliers or the functioning of the market, thus harming consumers indirectly.

### What do we mean by prudential regulation?

Prudential regulation relates to the commercial soundness of firms. A prudent firm will have appropriate systems and controls to manage its risks, and enough financial resources to deal with the consequences of those risks. For example, it would have enough resources set aside to put things right if consumers suffer harm unfairly.

4 As amended by the Financial Services Act 2012 and supporting legislation. 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.

5 *The FCA's approach to advancing its objectives*, 24 July 2013. [www.fca.org.uk/your-fca/documents/approach-to-advancing-its-objectives-2013](http://www.fca.org.uk/your-fca/documents/approach-to-advancing-its-objectives-2013).

6 *Our Strategy*, FCA, 8 December 2014. [www.fca.org.uk/your-fca/documents/reports/fca-our-strategy](http://www.fca.org.uk/your-fca/documents/reports/fca-our-strategy); *Business Plan 2015/16*, FCA, 24 March 2015. [www.fca.org.uk/your-fca/documents/corporate/business-plan-2015-16](http://www.fca.org.uk/your-fca/documents/corporate/business-plan-2015-16).

**Who are the firms we regulate?<sup>7</sup>**

We regulate around 73,000 firms for their conduct, and around 23,000 firms prudentially. The firms we regulate provide a huge variety of financial products and services to a wide range of consumers in the UK and internationally. These range from individual consumers buying retail products infrequently, such as mortgages or pensions, through to major global corporations regularly raising money in the international investment markets.

<b>Subject to conduct regulation by the FCA and prudentially regulated by the PRA<sup>8</sup></b>	<b>Subject to both conduct and prudential regulation by the FCA</b>
Banks Building societies PRA-designated investment firms Credit unions Friendly societies Life insurers General insurers Wholesale and commercial insurers and reinsurers Lloyd's and Lloyd's Managing Agents	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 Lloyd's Members' Agents Non-designated investment firms Consumer credit firms, including debt management companies.

**Relationship between our objectives**

- 1.19** There is no hierarchy to our objectives. We can choose to address issues to advance our consumer protection, market integrity or competition objective, or to advance more than one at a time.
- 1.20** FSMA provides that we must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge our general functions in a way which promotes effective competition in the interests of consumers.
- 1.21** We expect that our objectives will not normally conflict, and for the most part are mutually supportive. For example, effective competition will tend to produce better outcomes for consumers in terms of price, quality, range, service and innovation and so support our consumer protection objective. Similarly, market integrity is a prerequisite for effective competition in the

<sup>7</sup> These lists are generalised and not exhaustive.

<sup>8</sup> See the PRA's supervisory approach documents for more information on its own prudential approach. [www.bankofengland.co.uk/publications/Pages/other/prasupervisoryapproach.aspx](http://www.bankofengland.co.uk/publications/Pages/other/prasupervisoryapproach.aspx)

interests of consumers as a lack of integrity could, for example, reduce consumers' willingness to shop around for a better deal. Should tensions arise between our objectives, we will decide based on what is most compatible with our strategic objective<sup>9</sup> in the circumstances.

**1.22** Further detail about our statutory objectives and other statutory responsibilities are at Annex 1.

#### **Who are the main consumers we aim to protect?**

The statutory definition of 'consumers' is in FSMA Section 1G.

The main consumers we aim to protect include:

- retail consumers buying financial products or services for their own use or benefit (such as mortgages, personal loans, ISAs or investment advice)
- 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)
- small businesses buying financial products or services<sup>10</sup>

#### **Principles of good regulation**

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**1.23** When discharging our functions, we are also required by FSMA to have regard to the following regulatory principles<sup>11</sup>:

- **Efficiency and economy** – We are committed to using our resources in the most efficient and economical way. As part of this the Treasury can commission value-for-money reviews of our operations.
- **Proportionality** – We must ensure that any burden or restriction that we impose on a person, firm or activity is proportionate to the benefits we expect as a result. To judge this, we take into account the costs to firms and consumers.
- **Sustainable Growth** – the desirability of sustainable growth in the economy of the UK in the medium or long term.
- **Responsibility of consumers** – 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 the firm's activities and for ensuring that its business complies with regulatory requirements. This secures an adequate but proportionate level of regulatory intervention by holding senior management responsible for the risk management and controls within firms. Firms must make it clear who has what responsibility and ensure that its business can be adequately monitored and controlled.

<sup>9</sup> FSMA Section 1B (2) states the FCA's strategic objective to be: ensuring that the relevant markets function well. 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 (FSMA Section 1F (2)).

<sup>10</sup> The FCA defines a small business as any business with turnover below £1m. This includes micro-enterprises, defined as with fewer than 10 employees, and turnover and/or balance sheet of less than €2m (Small Business, Enterprise and Employment act 2014) and any small company, the definition of which requires that a company meet two out of three criteria: employment of no more than 50, turnover of no more than £6.5m and a balance sheet total of no more than £3.26m. (s.382 of the Companies Act 2006).

<sup>11</sup> See [www.fca.org.uk/about/operate/principles](http://www.fca.org.uk/about/operate/principles) and s1B(5)(a) FSMA 2000.

- **Recognising the differences in the businesses carried on by different regulated persons** – Where appropriate, we exercise our functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under FSMA.
- **Openness and disclosure** – We should publish relevant market information about regulated persons or require them to publish it, with appropriate safeguards. This reinforces market discipline and improves consumers' knowledge about their financial matters.
- **Transparency** – We should exercise our functions as transparently as possible. It is important that we provide appropriate information on our regulatory decisions, and that we are open and accessible to the regulated community and the general public.

**1.24** We must also have regard to the Regulators' code, which applies to a number of UK regulators including the FCA. The Regulators' Code provides a flexible, principles-based framework that supports and enables regulators to design their service and enforcement policies in a way that suits the needs of businesses and other regulated entities best.<sup>12</sup>

### Our risk-based approach

**1.25** We take a proportionate, judgement-based approach. We assess the risk a firm poses to our objectives, either individually or collectively, and focus our resources on the higher-risk issues. If we consider it necessary to make or amend our rules, we normally consult with the industry and consumers before doing so.

**1.26** In summary, we:

- identify and assess risks (both emerging and current) to consumers, firms and the financial markets
- identify the risk of market failures hindering effective competition
- develop a general understanding of the risks and issues in the financial markets to support our policy-making, authorisation, supervision and enforcement functions
- make evidence-based policies to help 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

<sup>12</sup> The *Regulators' Code* published in April 2014 updates the *Regulators' Compliance Code* published in 2006 under Part 2 of the Legislative and Regulatory Reform Act 2006. Further details on the regulators' code are provided in Annex 1. See also [www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code).

**1.27** Each year we publish a detailed Risk Outlook as part of our Business Plan.<sup>13</sup> This explains our thinking on medium to long term, current, and emerging risks. It also sets out what we see as the high-level risks that the financial services sector needs to consider over the coming years.

### Principles for Business

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**1.28** Our approach to regulation is also based on the principles which regulated firms must follow.<sup>14</sup> These are:

- **Integrity** – A firm must conduct its business with integrity.
- **Skill, care and diligence** – A firm must conduct its business with due skill, care and diligence.
- **Management and control** – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- **Financial prudence** – A firm must maintain adequate financial resources.
- **Market conduct** – A firm must observe proper standards of market conduct.
- **Customers' interests** – A firm must pay due regard to the interests of its customers and treat them fairly.
- **Communications with clients** – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
- **Conflicts of interest** – A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
- **Customers: relationships of trust** – A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
- **Clients' assets** – A firm must arrange adequate protection for clients' assets when it is responsible for them.
- **Relations with regulators** – A firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice.

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<sup>13</sup> See Chapter 1 of our Business Plan 2015/16. In previous years we published this as a separate document.

<sup>14</sup> These principles are fundamental obligations for regulated firms and set out in our Handbook. See: [www.handbook.fca.org.uk/handbook/PRIN/2/1.html](http://www.handbook.fca.org.uk/handbook/PRIN/2/1.html)

### How do we help the industry and consumers?

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- 1.29** Our job is to create a financial system that supports good conduct, and where the incentives and opportunities for bad conduct are low. We use our powers 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 benefit consumers.
- 1.30** We ensure that any burden or restriction we impose is proportionate to the benefits we expect as a result. When we consult on a change to our Handbook, for example, we generally carry out and publish a cost benefit analysis to assess the costs and the benefits we expect from the change.
- 1.31** We aim to develop regulation that is sustainable in the long-term. This means finding the right balance of regulation through the business cycle, not over-regulating following crises or too little during more benign periods.

## 2. Protecting consumers

### Our aims

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- 2.1** In this chapter we explain how we secure an appropriate degree of protection for consumers, and what this means to the businesses and markets we regulate.
- 2.2** One of our main responsibilities is to protect consumers from the firms and individuals in the financial industry that may cause them harm. We expect firms to have their customers at the heart of how they do business and in the products and services they offer.
- 2.3** We aim to:
- ensure that 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 they can expect from us
  - intervene early to tackle potential risks to consumers before they occur
  - maintain a strategy of 'credible deterrence', including intervening earlier, and continuing to hold senior individuals to account
- 2.4** We also have a duty to promote effective competition when pursuing our consumer protection objective. FSMA provides that we must, so far as is compatible with acting in a way which advances the consumer protection objective, discharge our general functions in a way which promotes effective competition in the interests of consumers.
- 2.5** As a matter of policy we normally choose the most pro-competitive measure open to us provided that it 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.
- 2.6** We will only make new rules and guidance if we think they will deal with the problem we have identified effectively and proportionately. We normally carry out cost benefit analyses to assess if the rules and guidance we make are proportionate.

### Treating customers fairly

- 2.7** The requirement on firms to treat their customers fairly is not new; it is firmly rooted in our Principles for Businesses.<sup>15</sup> Treating Customers Fairly (TCF) is central to our work in ensuring a fair deal for consumers. Under it we have set out six customer outcomes<sup>16</sup> which guide the general policy and principles we use to make rules, prepare and issue codes, and give general guidance.

#### The six outcomes of 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.

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

#### What is an 'appropriate' degree of protection?

- 2.9** We take a risk-based and proportionate approach so that consumers are appropriately protected, regardless of whether they are operating in an established or new market.
- 2.10** 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 in their best interests. We are also required to consider, when carrying out our work, the principle that consumers should take responsibility for their decisions.<sup>17</sup>
- 2.11** When we decide what is an 'appropriate' degree of protection, we have to strike a balance. An important part of our approach is establishing, through our policy-making processes, where that balance lies in relation to different consumers and different categories of authorised persons or regulated activities.
- 2.12** To help us act, we carry out research and use a variety of sources to gain a deeper insight into the experiences and behaviour of the consumers of financial services.<sup>18</sup> Consumer harm

<sup>15</sup> [www.handbook.fca.org.uk/handbook/PRIN/2/1.html](http://www.handbook.fca.org.uk/handbook/PRIN/2/1.html)

<sup>16</sup> [www.fca.org.uk/firms/being-regulated/meeting-your-obligations/fair-treatment-of-customers](http://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/fair-treatment-of-customers)

<sup>17</sup> This is a requirement for us to have regard to, when discharging our general functions (FSMA s.1B(5)(a), referencing s.3B(1)(d)), and/or when considering what degree of protection is appropriate for consumers, under the consumer protection objective (s.1C(2)9d)). See our *Principles of Good Regulation*. [www.fca.org.uk/about/operate/principles](http://www.fca.org.uk/about/operate/principles)

<sup>18</sup> See relevant research examples a) *Occasional Paper No. 1 – Applying behavioral economics at the Financial Conduct Authority*, 10 April 2013. [www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-1](http://www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-1); b) *Consumer Responsibility: Identifying and closing the gap*, FCA Practitioner Panel, September 2013. [www.fs-pp.org.uk/publications/research/consumer\\_responsibility\\_research\\_september\\_2013.html](http://www.fs-pp.org.uk/publications/research/consumer_responsibility_research_september_2013.html)

can arise in many ways. For example, people and businesses can face limited choice, pay uncompetitively high prices, be advised to buy an unsuitable product, or be treated unfairly by their chosen provider through the life of the product.

**2.13** Firms also need to ensure that they take steps to positively address the known behaviours and traits consumers may exhibit, rather than trying to exploit them. Firms should also fully consider the needs of potential consumers when they develop a product or service. Firms should also aim to develop smarter and more effective ways of communicating with consumers, for example, by shortening their terms and conditions to make them more accessible.<sup>19</sup>

**2.14** We use our *Consumer Spotlight*<sup>20</sup> to understand which consumer groups may be more at risk in relation to particular products, services and practices. Each of these groups has specific characteristics and needs, and our work uses the knowledge gained from this research. For example, we know that the retired with resources segment may be at higher risk of being victims of financial crime than other groups.<sup>21</sup>

#### **How we make policy**

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

**2.16** 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.

**2.17** Our Board considers and agrees our policies, and we normally consult with the PRA<sup>22</sup>, and publicly with the industry, consumers and other interested parties, on our rules and guidance before they are published in our Handbook. Our Handbook sets out our rules, guidance and other provisions (see next section).

**2.18** The evidence and analysis behind our proposals will look at the expected costs and benefits, and how the proposals fit with our statutory objectives, our competition duty, other duties and regulatory principles. We will also consider the effects of rule changes on the different firms and activities we regulate.

**2.19** We make our policies by:

- Prioritising our policy activities so that they are targeted where they can make the most difference
- Only making new rules and guidance if we think they will deal with the problem we have identified effectively and proportionately. We normally carry out cost benefit analyses to assess if the rules and guidance we make are proportionate
- Working with and influencing European policymakers, planning our initiatives so they align, as far as possible, with the European and international timetable.<sup>23</sup> For example, this may mean delaying policy development if we expect there to be a European initiative, rather than responding to an issue unilaterally, in order to be more effective and proportionate.

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19 See DP15/5 on smarter communications: [www.fca.org.uk/news/smarter-effective-communications](http://www.fca.org.uk/news/smarter-effective-communications)

20 [www.fca.org.uk/news/consumer-spotlight](http://www.fca.org.uk/news/consumer-spotlight)

21 For example, our Scamsmart campaign: [www.scamsmart.fca.org.uk](http://www.scamsmart.fca.org.uk)

22 FSMA s.3D places a duty on FCA and PRA to ensure co-ordinated exercise of functions in relation to matters of common regulatory interest e.g. dual-regulated firms. We may do joint consultations with the PRA for this purpose.

23 More information on our approach to strategic EU engagement can be found in the *Journey to the FCA*, [www.fca.org.uk/your-fca/documents/fsa-journey-to-the-fca](http://www.fca.org.uk/your-fca/documents/fsa-journey-to-the-fca) and our *Business Plan 2014/15*, [www.fca.org.uk/news/business-plan-2014-15](http://www.fca.org.uk/news/business-plan-2014-15)

However, we will consider implementing a domestic response if there is an immediate need to address an identified risk to consumers or markets.

- Carrying out policy research or post-implementation reviews, including planned reviews of European Directives, to understand how well our regulatory interventions have worked and to influence international initiatives.

### **Our Handbook**

**2.20** We publish our rules and guidance in our Handbook. This sets out and explains the expected standards for firms we regulate, and explains how our key regulatory processes operate. It includes, for example:

- how firms should conduct business 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) carry out their functions
- how firms should conduct their dealings with other market participants (wholesale standards)
- standards for market participants on market abuse and financial crime
- requirements for listed securities
- prudential standards for FCA-only authorised firms
- our approach to enforcement

**2.21** Our Handbook shows how our rules and guidance apply to different categories of authorised persons and regulated activity.

**2.22** Before making any rules, we normally consult the Prudential Regulation Authority (PRA)<sup>22</sup> and generally publish draft rules, a cost benefit analysis and an explanation of the purpose of the rules. We also consider any representations made about proposed changes.

**2.23** The PRA publishes its own rules and other provisions. Firms regulated by the PRA should read the FCA Handbook and the PRA Rulebook to understand the full set of requirements that apply to them.

### **Waiving our rules**

**2.24** We have the power to waive (set aside) or modify our rules, although not all rules can be waived or modified, given UK or EU legislation.

**2.25** 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

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

**2.27** We will publish the details of waivers and modifications on the Financial Services Register and a consolidated list on our website, unless we consider it inappropriate. It might be inappropriate if, for example, publication would create unreasonable prejudice to the commercial interests of the organisation concerned, or to any other member of its immediate group.

#### **Publishing general guidance**

**2.28** General guidance shows how we expect firms to behave and conduct themselves, or how our regulatory processes apply within the framework of our rules.

**2.29** 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**

**2.30** 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 individual retail consumers.

**2.31** We understand that some stakeholders can struggle to find the time to read and respond to our formal consultations. Our aim is to engage earlier, and use a range of different ways to get their views so that we gather feedback more quickly, effectively and in a way more accessible to others. For example, when developing our regime for the regulation of consumer credit we have ensured that firms and individuals have been able to feed in views in person at regional roadshows and by email before webinars, as well as through our usual consultation papers.

**2.32** We also engage with the FCA Statutory Panels (Financial Services Consumer Panel, Small Business Practitioner Panel, Markets Practitioner Panel and the Practitioner Panel) to understand their views and the views of those they represent.<sup>24</sup>

#### **Our publications**

**2.33** We are committed to communicating in an accessible way, so we will ensure that our publications are constructive, clear, concise, consistent and compelling to help them reach a wider audience.

#### **Carrying out consumer research**

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**2.34** 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 our particular functions take

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<sup>24</sup> [www.fca.org.uk/about/operate/who/statutory-panels](http://www.fca.org.uk/about/operate/who/statutory-panels).

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

### **Consumer insight**

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

**2.37** We gain our insight by:

- Our links with 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 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.

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

#### **Behavioural insights case study – Encouraging consumers to claim redress**

In 2013 we published research<sup>25</sup> from work we did with a firm that was writing to 200,000 of its customers, offering redress for a mis-sold product. We found that subtle alterations in the redress letter led to considerable improvements in responses.

We worked with the firm to conduct a randomised controlled trial to test different versions of the redress letter. We found that:

- reducing the amount of text more than doubled the response rate
- explaining that the claims' process would only take 5 minutes almost doubled response rates
- sending out reminders also almost doubled response rates and
- putting the main message in bullets at the top almost tripled response rates

Overall, we were able to move the level of response from 1.5% to 11.9%, equivalent to an additional 20,000 people responding.

### **Data**

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

**2.40** We collect data from firms based on the services they provide and the regulated activities they carry out. We also collect additional data during our supervisory and policy-making work, which varies in detail and content depending on the firm's potential impact on our objectives. We aim to ensure we collect data in a proportionate, clear and fair way.

<sup>25</sup> See *FCA Occasional Paper 2: Encouraging consumers to claim redress: evidence from a field trial*. [www.fca.org.uk/static/documents/occasional-papers/occasional-paper-2.pdf](http://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-2.pdf)

**2.41** We published *The FCA Data Strategy* to give firms more clarity on why we ask for certain data.<sup>26</sup> We explained why data is important to us, how we want to collect and use data in the future, our approach to delivering our vision for data and, given the size of the task ahead, our plan for implementation. Since October 2014, we have also published a quarterly *Data Bulletin* to give key information about what we do and the markets we regulate.<sup>27</sup> We recognise the burden which data requests put on firms and so try to collect data from firms in a proportionate way. Firms can also call or email us with any data queries they have at [fcadataandanalysis@fca.org.uk](mailto:fcadataandanalysis@fca.org.uk).

### Authorising firms and approving individuals

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**2.42** Our authorisation process ensures that firms and individuals who enter the financial industry meet our regulatory standards and are equipped to operate in the market.

**2.43** We examine firms when they apply to us to be authorised. We use all the relevant information available to us to gain a thorough understanding of the relevant matters, such as their internal culture, their business models and the way they treat their customers. We also assess whether firms that are not prudentially supervised by the PRA can meet our prudential requirements. We use a risk-based approach across all our authorisation processes, taking into account the nature, scale and complexity of the proposed business. We aim to:

- robustly assess firms and individuals to achieve good outcomes for consumers and the wider financial services market
- ensure firms' business models are sustainable and individuals have sufficient competence, integrity and have a strong consumer focus when they take decisions
- allow firms that meet the conditions for authorisation to enter the financial services market quickly

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

**2.45** As part of this, we recently launched our Innovation hub. This offers support to innovator businesses which want to introduce ground-breaking or significantly different financial products or services, including when they need assistance with an application for authorisation. This helps new or non-regulated businesses understand more about our regulatory framework and how it applies to them as they develop different products or services.<sup>28</sup>

**2.46** We can prevent firms from entering the market if we believe their poor behaviour poses a significant risk to consumers or to the market. They must address our concerns and we must be

<sup>26</sup> *The FCA Data Strategy*, 4 September 2013. [www.fca.org.uk/your-fca/documents/corporate/the-fca-data-strategy-how-we-will-manage-use-data](http://www.fca.org.uk/your-fca/documents/corporate/the-fca-data-strategy-how-we-will-manage-use-data); *The FCA Data Strategy: An update one year on*, 30 October 2014. [www.fca.org.uk/your-fca/documents/data-strategy-one-year-on](http://www.fca.org.uk/your-fca/documents/data-strategy-one-year-on); *FCA Data Bulletin: Issue 1 – October 2014*, 7 October 2014 [www.fca.org.uk/your-fca/documents/data-bulletin/data-bulletin-october-2014](http://www.fca.org.uk/your-fca/documents/data-bulletin/data-bulletin-october-2014)

<sup>27</sup> *FCA Data Bulletin: Issue 1 – October 2014*, (7 October 2014) [www.fca.org.uk/your-fca/documents/data-bulletin/data-bulletin-october-2014](http://www.fca.org.uk/your-fca/documents/data-bulletin/data-bulletin-october-2014).

<sup>28</sup> [www.innovate.fca.org.uk](http://www.innovate.fca.org.uk)

confident they have the right leadership and good practices in place to provide value and good outcomes for their customers before we allow them to do business.

### Assessing firms against our threshold conditions

**2.47** When firms apply for authorisation or want to vary their permissions, we assess them against our FCA threshold conditions<sup>29</sup>, which are the minimum standards all new entrants should meet. In assessing firms:

- 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 an unacceptable level of risk to consumers.
- We are open with potential applicants as they go through the authorisation process, making sure we engage early to help firms submit good quality applications.
- We will refuse applications that are significantly incomplete or do not meet our standards. For example, if the proposed products or services are not in the interests of consumers or pose a significant risk to our objectives.

### Assessing approved persons

**2.48** An approved person is someone who has been approved by the us and/or the PRA to perform one or more controlled functions<sup>30</sup> 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.<sup>31</sup>

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

**2.50** We consider all SIFs and customer function applications and assess the fitness and propriety of the candidate to perform the controlled function applied for. To ensure firms are well governed, we take a close and critical look at candidates to perform SIFs which, in higher-impact firms, may include the use of SIF interviews where appropriate.

**2.51** We work with firms to ensure they clearly define what approved persons are accountable for and that they tell us.

**2.52** We see accountability as crucial to reinforcing the way 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 for as long as they occupy that role.

### Important changes in accountability and remuneration

**2.53** We are making important changes in coordination with the PRA to the regime for individuals in UK banks, building societies, insurance firms, credit unions and PRA-designated investment firms. We are also introducing changes for UK branches of foreign banks.

29 The threshold conditions relate to: legal status of the firm; location of the firm's offices; effective supervision (including the firm's close links); the firm's resources; suitability of the firm and its personnel; and the firm's business model. See [www.fshandbook.info/FS/html/FCA/COND/](http://www.fshandbook.info/FS/html/FCA/COND/)

30 [www.fca.org.uk/firms/being-regulated/approved](http://www.fca.org.uk/firms/being-regulated/approved)

31 In March 2016, as part of the changes being introduced for the approved persons regime, SIFs will be replaced by Senior Manager Functions (SMFs) for UK banks, building societies, insurance firms, credit unions and PRA-designated firms.

**2.54** The changes target the behaviours and culture within banks that played a major role in the 2008-09 financial crisis, and in conduct scandals such as Payment Protection Insurance (PPI) mis-selling and the attempted manipulation of LIBOR.

**2.55** The changes build on the recommendations made by the Parliamentary Commission on Banking Standards (PCBS).<sup>32</sup> Amendments were also made to the Financial Services and Markets Act 2000 (FSMA) through the Financial Services (Banking Reform) Act 2013.<sup>33</sup>

**2.56** Specific changes include:

- The Senior Managers and Certification Regime (SM&CR) is a new accountability framework which will be implemented from March 2016. It applies to UK banks, building societies, credit unions and PRA-designated investment firms, including incoming branches of overseas banks. The Government has now introduced legislation that will extend this regime to all other FSMA-authorized persons. The SM&CR will put a statutory duty of responsibility on senior managers, while placing a stronger onus on firms to ensure that key members of staff are assessed as fit and proper each year. We will also apply enforceable Conduct Rules to these and other individuals in these firms.<sup>34</sup>
- Reform of the existing approved persons regime for insurance firms.
- Remuneration code changes – making sure that remuneration structures in banks, building societies, PRA-designated investment firms, and incoming branches of non-EEA banks<sup>35</sup> do not encourage inappropriate risk taking. The changes ensure a balance between fixed and variable pay. Where variable pay is awarded, this must be deferred for a number of years to allow the impact of people's decisions to play out in practice. And if individuals are involved in misconduct, or the performance turns out to be worse than was expected, firms can cancel unpaid bonuses and clawback monies already paid.<sup>36</sup>

#### **Approved persons codes**

**2.57** We can and have issued 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.

**2.58** 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**

**2.59** Individuals or organisations wanting to acquire, increase or decrease control over certain limits in an FCA-authorized firm – known as controllers – must seek our approval before doing so.<sup>37</sup>

32 In 2013 the Parliamentary Commission on Banking Standards considered how to improve the accountability of senior individuals in financial services firms and published its final report. This included a significant number of recommendations that affect us and the firms we supervise, including abolishing the Approved Persons Regime (APER) for deposit takers (banks, building societies, credit unions) and the nine designated investment firms regulated by the PRA and replacing it with a regime that is more focused on individual accountabilities.

33 [www.fca.org.uk/static/documents/consultation-papers/cp15-22.pdf](http://www.fca.org.uk/static/documents/consultation-papers/cp15-22.pdf)

34 For the final rules see: [www.fca.org.uk/static/documents/consultation-papers/cp15-22.pdf](http://www.fca.org.uk/static/documents/consultation-papers/cp15-22.pdf) and near final rules for foreign branches, see [www.fca.org.uk/static/documents/feedback-statements/fs15-03.pdf](http://www.fca.org.uk/static/documents/feedback-statements/fs15-03.pdf).

35 In particular, incoming branches of Non-EEA firms that if they were headquartered in the UK would be captured as either as a bank, building society, or PRA-designated investment firm

36 [www.fca.org.uk/news/ps15-16-strengthening-the-alignment-of-risk-and-reward](http://www.fca.org.uk/news/ps15-16-strengthening-the-alignment-of-risk-and-reward)

37 See SUP 11.3: Requirements on controllers or proposed controllers under the Act. [www.fshandbook.info/FS/html/FCA/SUP/11/3](http://www.fshandbook.info/FS/html/FCA/SUP/11/3)

- 2.60** When assessing changes in control we consider <sup>38</sup>:
- the acquirer's reputation, experience and financial soundness
  - if the firm's business model remains viable and whether it is able to continue to meet the threshold conditions
- 2.61** The CMA or the European Commission may review the transaction for mergers, acquisitions and restructuring from a competition perspective.
- 2.62** We assess the impact of the transaction on consumers to ensure the firm's affairs will be conducted in a sound and prudent manner. We expect the proposed controller to carry out appropriate due diligence in this area. We may consider refusal if we have significant concerns about a controller's integrity or reputation.
- 2.63** If a controller does not seek our approval of the acquisition or increase of control before it happens, for example, we are not told about a change in control until after the event, we will take appropriate action, which could include prosecution.

### **Passporting**

#### ***What is passporting?***

- 2.64** 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'.
- 2.65** The activities that can be carried out under a passport vary and are set out in the relevant EU Directives.
- 2.66** We deal with EEA firms wishing to passport into the UK, apart from banks and insurance companies which are managed by the PRA. We give more detail on how we and the PRA work together on passporting in our joint Memorandum of Understanding (MoU).<sup>39</sup>

#### ***The extent of our role in passporting***

- 2.67** Allowing firms to undertake cross-border regulated business across Member States in line with the relevant directives can help further our competition objective because it allows 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.

<sup>38</sup> See FSMA section 186 for details.

<sup>39</sup> [www.fca.org.uk/your-fca/documents/mou/mou-between-the-fca-and-the-pra-re-coordination-annex](http://www.fca.org.uk/your-fca/documents/mou/mou-between-the-fca-and-the-pra-re-coordination-annex)

- 2.68** 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
  - their following of the relevant EU rules
- 2.69** 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.
- 2.70** Single market legislation gives different responsibilities to home and host state regulators, which vary according to the specific piece of legislation involved.
- 2.71** In general, we have responsibility for supervising UK firms and their foreign branches, while supervision of the UK branches of foreign firms remains the responsibility of their home state. Where we act as a host state regulator, we have fewer powers over incoming EEA firms than over UK firms passporting out, particularly over cross-border services provided, for instance, by telephone or through the internet. Some EU directives give us greater responsibility for branches located in the UK.
- 2.72** We will use the framework of the European Supervisory Authorities, the European Securities and Markets Authority and the means of cooperating provided by the relevant EU directives to resolve cross-border supervisory risks.

### **Supervising firms**

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- 2.73** Supervising firms plays an important role in meeting our objectives. We look closely at firms' business models and culture and assess whether they are sound and robust. We focus on the important issues and the root causes of problems, as well as ensuring that there are accountable individuals in the firm if things go wrong. We have to be confident firms will be able to do the right thing for their customers and markets if problems arise. If we find poor practice, we use our supervisory and enforcement tools to deter others, mitigate risks and secure redress for consumers where necessary.
- 2.74** Our supervisory approach is based on a number of consumer and market-focused principles. As a regulator we want to be forward-looking and pre-emptive, using our judgements rather than relying wholly on process to seek out problems.
- 2.75** We do not do this in isolation. We engage openly with the firms and individuals we regulate, being as transparent as we can be and listening through our consultations, firm visits and events. We are also joined up in our work where it affects other UK regulators, such as the PRA, the Payments Systems Regulator, the Bank of England (BoE), or international regulators.

### **Our supervision framework**

- 2.76** 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 – Proactive Supervision**

**2.77** Proactive supervision 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**

**2.78** Event supervision aims to react rapidly and deal efficiently with events that may lead to potential or actual harm to consumers, market integrity or competition.

**2.79** While Pillar 1 is more pre-emptive, event supervision is more reactive. It includes monitoring firms to ensure they are complying with regulatory requirements.

**Pillar 3 – Issues and products supervision**

**2.80** Issues and products supervision looks at matters that cut across a number of firms or sectors and where there is a risk of harm to consumers. We carry out thematic work in pursuit of our objectives, analysing risk in the sector and 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 because we do not have the right rules in place.

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

**2.82** Our thematic reviews differ from our market studies (see Chapter 4). Market studies look at how markets operate, and decide whether we should intervene if they are not working well in the interests of consumers. We can carry out market studies using either our powers under FSMA or under our concurrent competition law functions and the provisions of the Enterprise Act 2002 (EA02).<sup>40</sup> Thematic supervision work looks across sectors or products to assess whether firms are meeting our expectations and complying with our rules. This approach means we can look broadly across sectors and products to identify issues that are common to more than one firm and, in some cases, across more than one sector.

**2.83** We publish<sup>41</sup> the findings from our thematic reviews on our website, and you can find a full list of all the market studies and thematic work we intend to carry out each financial year in our Business Plan for that year.<sup>42</sup>

**2.84** We can use our product intervention powers to intervene early in a product's life. This can help reduce the effect of emerging risks and provide solutions before they cause widespread harm across a market sector.

40 See also our Finalised Guidance on market studies and market investigation references, FG15/9 available at: [www.fca.org.uk/static/documents/finalised-guidance/fg15-09.pdf](http://www.fca.org.uk/static/documents/finalised-guidance/fg15-09.pdf)

41 [www.fca.org.uk/about/what/regulating/how-we-supervise-firms/thematic-reviews](http://www.fca.org.uk/about/what/regulating/how-we-supervise-firms/thematic-reviews)

42 [www.fca.org.uk/your-fca/list?ttypes=Corporate&year=&ssearch=business+plan](http://www.fca.org.uk/your-fca/list?ttypes=Corporate&year=&ssearch=business+plan)

### ***Developments in our Supervision Framework***

- 2.85** In December 2014, we announced our new strategy.<sup>43</sup> This strategy recognises that our remit is growing and now includes a diverse set of sectors with common issues and risks affecting firms within each sector. So the strategy envisages a sharper focus on priority issues, greater flexibility about our level and focus of engagement with all firms, and more emphasis on sector and market wide analysis to anticipate and address issues proactively.
- 2.86** In January 2015, we implemented structural changes to support us in delivering the strategy. We created new divisions: Supervision – Retail & Authorisations (SRA) and Supervision – Investments, Wholesale and Specialists (SIWS) with sector and specialist supervision areas within each Division.
- 2.87** We will continue to engage with firms individually, looking at the way in which firms and individuals behave. However, we will be able to avoid duplication, ensure consistency on common issues and promote effective competition in the interests of consumers by looking increasingly at how markets work as a whole.
- 2.88** As part of this, we have moved away from the 'C1-C4' conduct categories which we used previously. We now categorise firms as either 'fixed portfolio' or 'flexible portfolio'. Fixed portfolio firms are a small number of firms that we allocate a named individual supervisor to, and we proactively supervise them using a firm-specific continuous assessment approach. We proactively supervise flexible portfolio firms through a combination of cross-firm thematic work and programmes of communication, engagement and education. These firms use our Contact Centre as their first point of contact.

### **Impact on firms**

- 2.89** Supervision plays an important role in advancing our statutory objectives, but we also know that this places demands on firms. Our supervision strategy is designed to limit this burden for most firms, focussing our attention on those firms posing the greatest risks to consumers, particularly the more vulnerable, such as in the consumer credit area. We also try to minimise these demands by working efficiently and avoiding duplication, for example, joining up information requests from different parts of the FCA.

### **Regulating consumer credit**

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- 2.90** We became responsible for regulating consumer credit activities in April 2014. We want a sustainable credit market that continues to give consumers access to the products and services they need. We aim to help deliver this while protecting consumers from harmful practices that could lead to problems such as spiralling debt or inappropriate debt management plans.
- 2.91** We will scrutinise firms as they apply for authorisation to ensure that they meet our 'threshold conditions'. We expect firms to have:
- business models which ensure that customers are treated fairly
  - a good understanding of the rules, regulations and objectives of regulation

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<sup>43</sup> [www.fca.org.uk/your-fca/documents/reports/fca-our-strategy](http://www.fca.org.uk/your-fca/documents/reports/fca-our-strategy)

- 2.92** In the coming years we will continue to increase our knowledge and understanding of this diverse sector and the particular conduct risks it poses. We will be undertaking work to gain a deeper understanding of a wide range of issues, including how firms assess affordability, which will help us to take steps to mitigate the risks we find.
- 2.93** Our policy statement<sup>44</sup> outlines our approach to consumer credit regulation, and includes final rules that came into force on 1 April 2014. We have also published<sup>45</sup> a guide for firms that are new to FCA regulation. You can find a range of other useful information on our consumer credit website pages.<sup>46</sup>

### Enforcing our rules to protect consumers

#### Credible deterrence

- 2.94** We pursue a strategy of credible deterrence, taking tough and meaningful action against the firms and individuals who break our rules, reinforcing proper standards of market conduct and ensuring that firms put consumers at the heart of their businesses.
- 2.95** We do this by promoting high standards of conduct by individuals in firms and taking action against those who fail to meet them by using the full range of our criminal, civil, and regulatory powers. This reinforces our commitment to ensuring markets function well.<sup>47</sup>
- 2.96** The action we take to meet our aims includes:
- taking decisive action where firms fail to manage risks effectively or observe proper standards of market conduct
  - removing firms or individuals that fail to meet our standards from the industry
  - pursuing firms or individuals who abuse UK markets by using our criminal and civil powers
  - taking action where firms fail to treat customers fairly, penalising those who are responsible and ensuring they deliver effective redress quickly
  - taking action against unauthorised firms and individuals who undertake regulated activities in contravention of the general prohibition
- 2.97** We aim to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with our publicly stated policies. Further information about our approach to referring cases to enforcement, and our referral criteria, are set out on our website.<sup>48</sup>

#### Taking action early

- 2.98** Where we see poor behaviour we intervene early to prevent harm to consumers and markets and secure redress. Our enforcement and supervision functions work together to identify potential problems at an earlier stage, and take steps to stop them happening. For example,

44 *PS14/3: Final rules for consumer credit firms*, 27 February 2014. [www.fca.org.uk/news/ps14-3-final-rules-for-consumer-credit-firms](http://www.fca.org.uk/news/ps14-3-final-rules-for-consumer-credit-firms)

45 [www.fca.org.uk/your-fca/documents/consumer-credit-being-regulated](http://www.fca.org.uk/your-fca/documents/consumer-credit-being-regulated)

46 [www.fca.org.uk/about/what/championing/consumer-credit](http://www.fca.org.uk/about/what/championing/consumer-credit)

47 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>.

48 [www.fca.org.uk/firms/being-regulated/enforcement/how-we-enforce-the-law/referral-criteria](http://www.fca.org.uk/firms/being-regulated/enforcement/how-we-enforce-the-law/referral-criteria)

we will take action if we believe that part of a firm's business model or culture – such as its product selection or remuneration practices – are likely to harm consumers.

#### **Firms and senior managers**

- 2.99** We will impose tough penalties on firms that have failed to treat consumers well. This is backed up by our penalty policy, which links the size of the fine to the benefit a firm received from its misconduct.
- 2.100** We will continue to investigate senior managers and take action against them, for example when they fail to:
- recognise and manage the risk that their firm is running
  - control the way their products are sold

- 2.101** We will take action against unauthorised firms and individuals who undertake regulated activities in contravention of the general prohibition, make the public aware of the dangers of these activities and help return funds to victims where the courts have been able to recover money.

#### **Newer and existing powers**

- 2.102** We have some newer powers, for example, our product intervention rule making<sup>49</sup> and own initiative requirements powers<sup>50</sup>. We will also continue to make appropriate use of existing powers, such as our disciplinary powers, including suspensions<sup>51</sup> and own initiative variation of permission power.

#### **Settlement**

- 2.103** We resolve many enforcement cases by settlement. Early settlement has many potential advantages. For example, it can ensure consumers receive compensation earlier than would otherwise be the case, it can make savings to industry and ourselves, and it can get important messages out to the market more quickly.<sup>52</sup>
- 2.104** We explain our approach to enforcement in relation to our market integrity objective in Chapter 3.

#### **Working with others**

- 2.105** To meet our objectives we must coordinate with other bodies. We regularly need to work with HM Treasury (HMT), other UK regulators such as the PRA and our counterparts in other countries, which may also include other enforcement agencies.
- 2.106** We will work closely with the Serious Fraud Office, National Crime Agency, the City of London Police, and other UK law enforcement agencies to deliver our 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.
- 2.107** We also work closely with others on priority areas of significant policy change, such as pensions, where we work with the Pensions Regulator and Department for Work and Pensions.

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49 [www.fca.org.uk/fsa-ps13-03](http://www.fca.org.uk/fsa-ps13-03)

50 The FCA's powers to set individual requirements and limitations on its own initiative. <http://fshandbook.info/FS/html/FCA/SUP/7/2>

51 The FCA's powers to impose a suspension. <http://fshandbook.info/FS/html/FCA/DEPP/6A>

52 Details of our settlement decision procedure and a description of our approach to settlement can be found in our *Decisions, Procedures and Penalties Manual* ([www.fshandbook.info/FS/html/FCA/DEPP](http://www.fshandbook.info/FS/html/FCA/DEPP)) and *Enforcement Guide* (see footnote 16 for link).

**2.108** 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 a detailed, prescriptive approach wherever possible, to ensure that judgement and flexibility are not lost
- providing regular reviews, ensuring that any MoU remains current and embedded within the organisations

### **The Financial Ombudsman Service (the Ombudsman) and the Financial Services Compensation Scheme (FSCS)**

**2.109** The Ombudsman and the FSCS play an important role with us in protecting consumers. Together, these bodies help to maintain confidence in financial services.

**2.110** The Ombudsman is available to eligible consumers who are dissatisfied with the way a firm has dealt with their complaint. It must pass us any information that it believes could help us fulfil our operational objectives so we can consider it. This gives us a valuable insight into how firms treat their customers and handle their complaints.

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

**2.112** The Ombudsman is independent from us, but takes into account our relevant rules, guidance and standards when determining complaints. If a complaint falls within the scope of a consumer redress scheme specified under statutory provisions, the Ombudsman must also decide the complaint based on how it should be, or have been, decided under that scheme, unless the relevant firm and consumer agree to disapply the provisions of the scheme.

**2.113** The FSCS is also independent from us. It considers claims against firms that are, or likely to be, unable to pay claims against them, for example, because they are insolvent.

**2.114** Further information about the accountability and the rules under which both the Ombudsman and the FSCS operate is available in the Handbook, the MoUs we have with them<sup>53</sup> and on their websites.<sup>54</sup>

### **The Money Advice Service**

**2.115** 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 Money Advice Service has access to a wide range of consumers through their various channels and will capture information that may help us, for example, in:

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

<sup>53</sup> [www.fca.org.uk/mou-fca-fos](http://www.fca.org.uk/mou-fca-fos), [www.fca.org.uk/mou-fca-fscs](http://www.fca.org.uk/mou-fca-fscs)

<sup>54</sup> [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk), [www.fscs.org.uk](http://www.fscs.org.uk)

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

**2.117** The FCA and the Money Advice Service have a specific statutory duty to cooperate with each other.<sup>55</sup> Although the Money Advice Service is independent, it must take into account our duty to deliver our operational objectives when carrying out its statutory function. We are to ensure the Money Advice Service is capable of cooperating with us. These provisions are set out in a Framework Document.<sup>56</sup> We must also consider any information the Money Advice Service gives us when we decide what degree of consumer protection may be appropriate.

**2.118** Further information about the roles and responsibilities of the FCA and the Money Advice Service is available in our joint MoU and on their website.<sup>57</sup>

#### **International bodies**

**2.119** Decisions taken in European and international forums – in particular the EU institutions and the European Supervisory Authorities (ESAs) – increasingly determine the way we carry out our role. This may be through legislation, rule-making, guidance or otherwise influencing the general policies and principles by which, for example, we supervise firms. We in turn engage at EU and international levels to influence legislation and standards that affect how we meet our objectives.

#### **How we engage internationally**

**2.120** We implement, supervise and enforce EU and international standards and regulations in the UK. As part of this we contribute to international debates and policy-making processes, seeking to ensure that our objectives are reflected consistently in international regulation.

**2.121** We coordinate our EU and global engagement with the PRA, the Bank of England, the Treasury and other relevant stakeholders. A MoU between the FCA, the PRA, the BoE and the Treasury sets out how we work together when engaging with EU and international organisations.<sup>58</sup> This is further supported through the International Coordination Committee (ICC), involving officials from the UK authorities and chaired by the Treasury.

**2.122** We proactively engage with European and other international authorities to try to ensure EU and global standards:

- reflect the unique features of UK markets and protect or enhance the integrity of the UK financial system
- deliver an appropriate degree of protection for consumers
- promote competition in the interests of consumers and are consistent with the principles of better regulation

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55 FSMA Sch 1A para 6A(1)

56 *Money Advice Service, Financial Conduct Authority and HM Treasury Framework Document*, 24 May 2013. [www.fca.org.uk/static/documents/mou/mas-fca-hmt-framework-document.pdf](http://www.fca.org.uk/static/documents/mou/mas-fca-hmt-framework-document.pdf). The role of MAS has recently been reviewed by the Government [www.gov.uk/government/publications/review-of-the-money-advice-service](http://www.gov.uk/government/publications/review-of-the-money-advice-service). The FCA's response to the review can be viewed at [www.fca.org.uk/news/john-griffith-jones-responds-to-the-christine-farnish-review-of-the-money-advice-service](http://www.fca.org.uk/news/john-griffith-jones-responds-to-the-christine-farnish-review-of-the-money-advice-service)

57 [www.fca.org.uk/mou-fca-mas](http://www.fca.org.uk/mou-fca-mas), [www.moneyadvice.service.org.uk](http://www.moneyadvice.service.org.uk)

58 [www.fca.org.uk/mou-international-orgs](http://www.fca.org.uk/mou-international-orgs)

### **Our role in global regulation**

- 2.123** We participate in the institutions and organisations that set global standards. For example, 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), and the European Securities and Markets Authority (ESMA).
- 2.124** We also engage with other European and global organisations that 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)
- 2.125** 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 good 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**

- 2.126** 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.
- 2.127** We aim to make it as easy as possible for all consumer organisations to work with us so we can benefit from each other's information, knowledge and experience. We aim to make the most of our relationships, creating trust and encouraging a productive, open conversation.
- 2.128** We have a single main contact point for consumer representatives and try not to place too much of a burden on consumer organisations by coordinating requests for help or information.
- 2.129** Our Consumer Helpline<sup>59</sup> 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 our consumer segmentation model we can consider the issues and needs of specific groups, and tailor our response to these different groups.
- 2.130** Our Customer Contact Centre<sup>60</sup> 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. This guidance is designed to inform firms before they apply and smooth their journey through the processes.
- 2.131** 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 Smaller Business Practitioner Panel, the Financial Services Consumer Panel and the FCA Markets Practitioner Panel.

<sup>59</sup> [www.fca.org.uk/consumers/consumer-helpline](http://www.fca.org.uk/consumers/consumer-helpline)

<sup>60</sup> [www.fca.org.uk/contact-firms](http://www.fca.org.uk/contact-firms)

**2.132** 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

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

## 3. Market integrity

### Our aims

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- 3.1** We protect and enhance the integrity of the UK financial system. This benefits firms, individuals and society as a whole, and we continue to work to ensure markets are effective, efficient and reliable.
- 3.2** We aim to support and empower a healthy and successful financial system, where financial markets are efficient and transparent, firms can thrive and consumers of all types can place their trust in transparent and open markets. This means that the markets need to be supported by resilient infrastructure, with appropriate access and transparency to meet the needs of the consumers, corporates and other wholesale clients that use them.
- 3.3** We seek to ensure that:
- senior management are accountable for their capital markets activities, including principal and agency responsibilities
  - there is a positive culture of proactively identifying and managing conflicts of interest
  - there is orderly resolution and return of client assets
  - firms' business models, activities, controls and behaviours maintain trust in the integrity of markets and do not create or allow market abuse, systemic risk or financial crime
  - market efficiency, cleanliness and resilience is delivered through transparency, surveillance and the supervision of infrastructures, as well as their principal users
  - firms, acting as agents on behalf of their clients, put clients' best interests at the heart of their businesses
  - we intervene early in wholesale markets to mitigate the risk of harm being transmitted to retail consumers
- 3.4** We also have a duty to promote effective competition when addressing our market integrity objective. Specifically, FSMA provides that we must, so far as is compatible with acting in a way which advances the market integrity objective, discharge our general functions in a way which promotes effective competition in the interests of consumers.
- 3.5** As a matter of policy we normally aim to choose the most pro-competitive measure open to us provided that it 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.

### Prudential policy

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- 3.6** We are the prudential regulator for authorised firms not regulated by the Prudential Regulation Authority.<sup>61</sup> In this capacity we regulate firms across a wide spectrum of financial services activities, such as asset managers, independent financial advisers, and mortgage and insurance brokers.
- 3.7** Prudential requirements are the obligations placed on financial services firms to hold certain amounts of specified financial resources for regulatory purposes. These are important because they aim to minimise the risk of harm to consumers by ensuring that firms behave prudently by monitoring and managing business and financial risks. Experience tells us that if a firm is in financial difficulty or fails, it can cause harm and disruption for consumers. A firm under financial strain is more vulnerable to behaving in a way that increases the likelihood of consumers suffering loss. We tailor these requirements to the needs of firms and consumers in different sectors.<sup>62</sup>
- 3.8** Our approach aims to minimise the harm to consumers, wholesale market participants and market stability when firms experience financial stress or fail in a disorderly manner. Our general approach to prudential supervision is based on managing failure when it happens rather than focusing on reducing its probability – this is because isolated failures of FCA-only firms would not generally present a risk to the integrity of the financial system. With the exception of a small number of prudentially critical firms, where we continue to actively work to reduce their probability of failure, our focus is on ensuring that, if firms fail, they do so in an orderly manner, reducing the negative impact on consumers and the integrity of the financial system.
- 3.9** We ensure that firms meet minimum prudential requirements and monitor their compliance with relevant rules and requirements. We carry out detailed analysis, set financial resource requirements for the most prudentially significant firms and engage with them proactively at signs of strain or crisis.
- 3.10** Our engagement can include creating a crisis management group with relevant areas of expertise to explore suitable courses of action, as well as challenging firms to consider and develop wind-down plans, including recovery options, and deciding if they need to hold additional capital to enable an orderly resolution.

### Authorising firms and approving individuals

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- 3.11** 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 in Chapter 2 which we use to carry out our authorisation and approval roles for consumer protection equally apply to our market integrity objective.
- 3.12** For 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 produce:

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61 Prudential requirements for dual-regulated firms are set by the PRA. Dual-regulated firms include banks, building societies, credit unions, insurers, and designated investment firms.

62 In May 2015, for example, we published a consultation paper which proposed new capital resources requirements for the 5,000 Personal Investment Firms subject to IPRU (INV) chapter 13.31. See [www.fca.org.uk/news/cp15-17-capital-resource-requirements-pifs](http://www.fca.org.uk/news/cp15-17-capital-resource-requirements-pifs)

*'an appropriate, viable and sustainable business model, given the nature and scale of business the firm intends to carry out.'*<sup>63</sup>

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

### Prudentially supervising firms

- 3.14** The firms that we prudentially regulate fall into four prudential categories: P1, P2, P3 and P4. These categories reflect the impact that the disorderly failure of a firm could have on markets and consumers, and decide how intensively we prudentially supervise each firm.<sup>64</sup>

- P1 firms and groups are those whose failure could cause significant, lasting damage to the marketplace, consumers and client assets, because of their size and market impact.
- P2 firms and groups are those whose failure would have less impact than P1 firms, but would nevertheless damage markets or consumers and client assets.
- P3 firms and groups are those whose failure, even if disorderly, is unlikely to have a significant market impact. They have the lowest intensity of prudential supervision.
- P4 firms are those with special circumstances – for example, firms in administration – for which bespoke arrangements may be necessary.

### Supervising wholesale conduct

- 3.15** We look at how market participants interact with each other and conduct their business in wholesale markets, including their trading and dealing activities. Our approach covers market infrastructures, investment banks and the wholesale activities of other banks, trading firms, asset managers and individuals.

- 3.16** The main causes of wholesale conduct risks – particularly mismanaging inherent conflicts of interest – result in harm to consumers and damage market integrity by undermining trust and confidence.

- 3.17** 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

<sup>63</sup> *Journey to the FCA*, p.21 [www.fca.org.uk/static/documents/fsa-journey-to-the-fca.pdf](http://www.fca.org.uk/static/documents/fsa-journey-to-the-fca.pdf)

<sup>64</sup> *The FCA's Approach to Supervision* guides for more information on our prudential regulation approach for different categories of firm. [www.fca.org.uk/about/what/regulating/how-we-supervise-firms/our-approach-to-supervision](http://www.fca.org.uk/about/what/regulating/how-we-supervise-firms/our-approach-to-supervision)

- while retail consumers do not usually participate directly in wholesale activities, the connection between retail and wholesale markets means risks can be transferred between them

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

- harm caused by products manufactured in wholesale markets and distributed to retail markets where product features are not transparent or are misleading
- poor conduct by firms where differences in expertise, sophistication or alignment of interests can damage the integrity of markets or cause poor consumer outcomes
- 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 quantifiable harm caused to individual parties to a transaction
- potential disruptions to markets working properly caused by firms failing or failing to meet their obligations

### **Regulating securities markets**

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**3.19** Our core securities markets regulatory activities focus on:

- supervising the infrastructures that support the trading of financial instruments
- overseeing the conduct of issuers of securities in the primary markets and that of their advisers, including acting as the UK listing authority (UKLA)
- maintaining broad oversight of trading on the secondary markets, both on-exchange and over-the-counter (OTC) markets and detailed monitoring to prevent, detect and pursue market abuse.

#### **Market infrastructure**

##### ***Trading platforms***

**3.20** Our supervision of Recognised Investment Exchanges (RIEs) and Multilateral Trading Facilities (MTFs) our firm supervisory approach is carried out in accordance with the principles established by our firm supervisory approach (see *Supervising firms* in Chapter 2). We follow a supervisory model based on a relationship-led and risk-based approach. Under this model, we will consider which of the regulatory tools offered by our supervisory, policy and competition remits will deliver the market outcomes we want to achieve.

##### ***Recognised Investment Exchanges (RIEs)***

**3.21** The way we supervise an RIE depends on how much risk the trading venue's strategy and operation 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 4).

**3.22** We will use our supervision, investigation and enforcement powers for RIEs proportionately and only use these formal powers when other approaches are not, or unlikely to, achieve our

objectives. We may 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.<sup>65</sup>

### ***Multilateral Trading Facilities (MTFs)***

**3.23** MTFs provide organised trading facilities across a wide range of markets often alongside RIEs. Our approach to authorising and supervising MTFs is proportionate to both the risk each MTF operator poses to our objectives and to the nature and scale of the MTF's activities.

**3.24** Consistent with our firm supervisory approach, we may combine targeted supervisory engagement with cross-MTF thematic work. We have designed and implemented our approach to ensure that our supervision of MTFs and RIEs delivers equivalent regulatory outcomes.

**3.25** 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.<sup>66</sup>

### ***The UK listing regime***

**3.26** We are the listing authority for the UK.<sup>67</sup> Our listing regime is the gateway for firms that want to raise funding by issuing securities to the wider public. The listing rules help to protect consumers and deliver market integrity by ensuring high standards of market practice and appropriate disclosure.<sup>68</sup>

**3.27** Our activities encompass:

- live market monitoring
- the regulation of capital markets and corporate finance transactions
- the supervision of sponsor firms
- maintenance of the Official List
- support for policy colleagues, and
- involvement in the investigation and enforcement of breaches of the Listing regime

**3.28** Our work is market-facing and real time, often high profile, and places us at the centre of the UK's securities markets. To make securities markets work well, we focus on issuers of securities.

**3.29** In the UK, we do this through:

- monitoring market disclosures by issuers and others and through enforcing compliance with the FCA Disclosure and Transparency Rules,
- reviewing and approving prospectuses published by issuers and those offering securities, and through enforcing the FCA Prospectus Rules, and

<sup>65</sup> See PS14/6, our recent policy statement on competition in the markets for services provided by RIEs, 2 April 2014. [www.fca.org.uk/news/firms/ps146-competition-in-the-markets-feedback-on-cp1316-and-final-handbook-text](http://www.fca.org.uk/news/firms/ps146-competition-in-the-markets-feedback-on-cp1316-and-final-handbook-text)

<sup>66</sup> [www.fca.org.uk/mou-fca-bank-pra](http://www.fca.org.uk/mou-fca-bank-pra)

<sup>67</sup> 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.

<sup>68</sup> For a recent review of the listing rules please see PS14/8: Response to CP13/15 – Enhancing the effectiveness of the Listing Regime, 16 May 2014. [www.fca.org.uk/news/ps14-08-enhancing-the-effectiveness-of-the-listing-regime](http://www.fca.org.uk/news/ps14-08-enhancing-the-effectiveness-of-the-listing-regime)

- operating the UK Listing regime which requires listed issuers to comply with the FCA Listing Rules, and which gives investors an accreditation showing those issuers meet a range of standards on governance and investor protection

#### *Sponsors*

- 3.30** Sponsors advise listed issuers at key points, such as an initial listing or when an issuer enters into a significant transaction.
- 3.31** We maintain a list of approved sponsors. Our supervisory role over sponsor firms is to ensure that they fulfil a particular set of responsibilities.
- 3.32** 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
- 3.33** We look at areas of greatest risk and where we can most cost-effectively reduce the risk of a sponsor failure using our available resources. We use a number of tools, including regular and informal visits to sponsor firms.

#### *Primary Information Providers (PIPs)<sup>69</sup>*

- 3.34** 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.
- 3.35** We use our supervisory role to ensure that PIPs respond to the changing technology available for receiving, handling and disseminating of regulated information, and to ensure that PIPs are forward-looking in their risk management.

#### ***Transaction reporting and market surveillance***

- 3.36** We expect market participants to act as the first line of defence against market abuse and not to rely solely on us to monitor markets. We detect and minimise abusive behaviour in the markets we regulate by:
- supervising the quality of transaction reporting data submitted by firms
  - overseeing the suspicious transactions that firms are required to report
  - overseeing trading venues' surveillance systems
  - continually improving our own surveillance systems
  - taking tough action against those who abuse the markets
- 3.37** We aim to educate and inform firms in a variety of ways, such as through our forums, our Market Watch newsletter, our participation in industry panels and our external engagement.

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<sup>69</sup> Our supervisory role in this area applies more widely than to authorised persons and does not cover a regulated activity. For recent changes in the sponsor regime please see CP14/21, 26 September 2014. [www.fca.org.uk/your-fca/documents/consultation-papers/cp14-21](http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-21)

### Regulating benchmarks

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- 3.38** Benchmarks help to set prices, measure performance and work out interest payments in a wide range of financial markets. We regulate eight benchmarks, including LIBOR, a key interest rate benchmark.<sup>70</sup>
- 3.39** We can fine firms and ban traders where we find attempted benchmark manipulation. This promotes market integrity by ensuring a credible deterrent to those who seek to abuse the system.
- 3.40** We have an objective to ensure that markets work well. Key benchmarks are used across the globe, so it is vital that regulators take coordinated steps to improve market integrity. We work with HMT and the BoE on European-wide rules for benchmarks, and domestic reforms led by the UK Fair and Effective Markets Review. We also engage with global regulatory groups, and co-chair the work of the International Commission of Securities Regulators (IOSCO) and the Financial Stability Board (FSB) on benchmarks led by the UK Fair and Effective Markets Review.

### Enforcing our rules to protect markets

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- 3.41** We focus on reinforcing proper standards of retail and wholesale conduct, ensuring that firms put market integrity at the heart of their businesses and tackling issues that pose a higher risk to our objectives.

#### Tackling market abuse

- 3.42** Delivering clean markets and tackling market abuse is central to our market integrity objective, as market abuse can directly damage trust in the markets.
- 3.43** We work to reduce the risks posed by potentially abusive behaviour, such as the spreading of false information that misleads or distorts the market, or information leaks which can lead to insider dealing. We have a range of ways we can be told or find out about market misconduct, and continue to develop more sophisticated practices for investigating market abuse, whatever form it takes.
- 3.44** We can and will identify, expose and act against those who engage in market abuse to encourage better standards of market conduct and behaviour.
- 3.45** 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.
- 3.46** We use our 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.
- 3.47** When it comes into force in July 2016, the Market Abuse Regulation (MAR) will give the FCA more powers to tackle market abuse. For example, MAR extends its scope to financial

<sup>70</sup> [www.fca.org.uk/firms/markets/benchmarks](http://www.fca.org.uk/firms/markets/benchmarks)

instruments traded solely on new platforms and over the counter (OTC) and adapts rules to address new technologies and behaviours.

### **Code of Market Conduct**

**3.48** We issue 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

**3.49** 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 in response to the consultation and publish any significant differences between the draft and final code amendments.

**3.50** The code will change, for example, when we implement the MAR. We recently published a Consultation Paper, CP 15/35, with policy proposals and handbook changes related to its implementation.<sup>71</sup>

### **Short selling**

**3.51** The FCA is the UK competent 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**

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**3.52** We work to ensure the firms we regulate have appropriate systems and controls to prevent the risk they may be used for financial crime. We take a range of actions to achieve this.

**3.53** One aspect of our approach is 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, and we review applications for authorisation with that in mind. For example, we continue to tackle unauthorised businesses – “boiler rooms” and other investment scams – that seek to defraud the public of their savings.

**3.54** Our supervisory work probes the adequacy of firms’ defences against financial crime. Many firms we regulate are also required by law to take risk-sensitive measures to detect and prevent money laundering and it is our job to police this. We use thematic reviews to explore how firms counter these risks. We also use targeted visits to test the effectiveness of firms’ systems and controls, as well as our Systematic Anti-Money Laundering Programme (SAMLPL), which is a rolling review of how adequate the anti-money laundering defences are in Britain’s largest financial institutions. We publish non-binding guidance about financial crime to provide industry with examples of good practice.

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<sup>71</sup> See [www.fca.org.uk/news/cp15-35-implementing-market-abuse-regulation](http://www.fca.org.uk/news/cp15-35-implementing-market-abuse-regulation)

- 3.55** We can take enforcement action against financial firms that fail to comply with their legal and regulatory obligations related to financial crime.

### Protecting client assets

#### Client assets

- 3.56** Our regulatory role for client assets applies to a number of different sectors and types of firms within them. We combine supervision and policy to deliver a consistent risk-based and proportionate approach that recognises the diversity of the regulated firms that hold client assets.
- 3.57** We focus our client assets supervision on higher risk firms, where risk is determined by a firm's balance of client money and assets holdings, and the severity of issues that do or may exist in that firm.
- 3.58** We identify client assets issues through firms' regular reporting of client money and assets, auditor's annual reports and other sources (such as prudential alerts, firm supervisor contact and reporting from the CASS Operational Compliance officer).
- 3.59** When we make policy we consider the market or regulatory failings we have 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 this is the best course of action.

### Working with others

- 3.60** It is essential that we work with other authorities in order to meet our objectives. These include overseas authorities, such as regulators and law enforcement agencies.

#### The Prudential Regulation Authority (PRA)

- 3.61** The PRA is responsible for the prudential regulation and supervision of around 1,700 banks, building societies, credit unions, insurers and major investment firms. We regulate the conduct of those firms.
- 3.62** We have a statutory MoU<sup>72</sup> with the PRA that sets out clear responsibilities for each regulator against which we regularly monitor performance, including quarterly joint reviews by the CEOs. We will continue to coordinate and cooperate with the PRA across all relevant activities, which we actively and jointly oversee.
- 3.63** However, we both recognise that, with differing objectives and responsibilities, it is sometimes appropriate to take different approaches. For example, although we have worked together to implement EU Directives<sup>73</sup>, the PRA has made its own prudentially-related FSCS disclosure rules for banks and insurers.

<sup>72</sup> [www.fca.org.uk/your-fca/documents/mou-between-the-fca-and-the-pracoordination](http://www.fca.org.uk/your-fca/documents/mou-between-the-fca-and-the-pracoordination)

<sup>73</sup> a) *CP12/13: Transposition of Solvency II*, 11 July 2012. [www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp1213](http://www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp1213)

b) *CP13/6: Capital requirements for investment firms*, 31 July 2013. [www.fca.org.uk/news/cp13-06-capital-requirements-for-investment-firms](http://www.fca.org.uk/news/cp13-06-capital-requirements-for-investment-firms) c) *PS14/5: Response to CP12/38 –Mutuality and with-profits funds: a way forward*, 28 March 2014. [www.fca.org.uk/your-fca/documents/policy-statements/ps14-05](http://www.fca.org.uk/your-fca/documents/policy-statements/ps14-05)

**3.64** The FCA and the PRA also have MoUs with the Bank of England and the Treasury on international engagement, and on the supervision of financial market infrastructure, aiding the Bank of England to meet its financial stability objective.<sup>74</sup>

**Bank of England/Financial Policy Committee (FPC)**

**3.65** The Bank of England is responsible for financial crisis management and for supervising payment systems, settlement systems and clearing authorities. We work closely with the Bank to regulate trading platforms and post-trade systems, under the terms of a MoU, to enable us both to fulfil our respective mandates.<sup>75</sup>

**3.66** 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.

**3.67** 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 and why it has failed to do so.

**Coordination with international bodies**

**3.68** We implement, supervise and enforce EU and international standards and regulations in the UK. As part of this we contribute to international debates and policy-making processes, ensuring that our objectives are reflected consistently in international regulation. The international bodies we work with are described in Chapter 2.

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

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74 [www.bankofengland.co.uk/financialstability/pages/default.aspx](http://www.bankofengland.co.uk/financialstability/pages/default.aspx)

75 [www.fca.org.uk/mou-international-orgs](http://www.fca.org.uk/mou-international-orgs)

## 4. Promoting effective competition

### Our aims

- 4.1** We have an objective to promote effective competition in the interests of consumers in the markets we regulate. We also have a competition duty. FSMA provides that we must, so far as is compatible with acting in a way which advances the consumer protection objective or the market integrity objective, discharge our general functions in a way which promotes effective competition in the interests of consumers.
- 4.2** We help to develop markets that will benefit consumers through effective competition. When competition is effective, engaged and active consumers are able to choose between suppliers, which stimulates rivalry to offer better value, better quality, new products and innovative methods of delivery.
- 4.3** As a matter of policy we normally aim to choose the most pro-competitive measure open to us provided that it 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.
- 4.4** Information on our competition approach is available from our website<sup>76</sup>, which has a guide on how we use our competition powers, including the concurrent competition law powers we acquired in April 2015, as well as how we carry out market studies. We also provide extensive detail on our completed and ongoing market studies, including their announcements, the terms of reference, the interim and final reports, related publications and research, and information on the solutions that come from the market studies.<sup>77</sup>
- 4.5** In this chapter we focus on the issues we think are likely to harm competition and how we identify them.

### Our competition powers

- 4.6** We can use all our FSMA powers to pursue our competition mandate. In April 2015 we were also granted concurrent competition law powers, which we explain in this section.

#### FSMA powers

- 4.7** We can use our powers under FSMA to pursue our competition objective. When considering how effectively competition is working in a relevant market, FSMA provides that we may look at several specific factors, including:

<sup>76</sup> [www.fca.org.uk/about/what/promoting-competition](http://www.fca.org.uk/about/what/promoting-competition)  
<sup>77</sup> [www.fca.org.uk/news/list?types=Market+study&year=&search=](http://www.fca.org.uk/news/list?types=Market+study&year=&search=)

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

**4.8** We use market studies as our main tool for examining competition issues in the markets we regulate.<sup>78</sup>

#### **Concurrent powers**

**4.9** From 1 April 2015,<sup>79</sup> we have had 'concurrent' competition powers. They are concurrent because the CMA (and possibly other regulators) may be able to exercise them in the sector, although there are provisions in place to ensure that only one authority is formally investigating or taking enforcement action, in any particular case at any one time.

**4.10** This means we have powers to investigate and enforce infringements of the Competition Act 1998 (CA98) and Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) in the financial services sector. These provisions prohibit agreements or concerted practices that restrict competition and abuses of a dominant position under UK and EU law respectively.

**4.11** We can also carry out market studies under the Enterprise Act 2002 (EA02) of markets in the UK for financial services, and make a market investigation reference (MIR) to the CMA.

**4.12** We are also bound by statutory provisions giving 'primacy' to CA98 enforcement in certain situations. This means that, before exercising powers in section 234K FSMA, we have a duty to consider if it would be more appropriate to proceed under CA98. If we consider that it would, then we must do so, rather than exercise that other power.<sup>80</sup>

**4.13** Our approach to our concurrent competition powers has been set out in guidance available on our website.<sup>81</sup>

#### **Developing policy to promote competition**

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**4.14** In deciding whether to investigate potential competition issues we target our resources based on the areas that we consider carry the greatest potential consumer harm and/or where we believe we can intervene and help consumers most.

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78 We may carry out market studies under either FSMA or EA02. See also paragraph 2.82 above.

79 The relevant amendments to FSMA by the Financial Services (Banking Reform) Act 2013 came into effect on 1 April 2015.

80 See also guidance on our website for more details available at: [www.fca.org.uk/static/documents/finalised-guidance/fg15-08.pdf](http://www.fca.org.uk/static/documents/finalised-guidance/fg15-08.pdf)

81 PS15/18: [www.fca.org.uk/news/ps15-18-fca-competition-concurrency-guidance-handbook-amendments](http://www.fca.org.uk/news/ps15-18-fca-competition-concurrency-guidance-handbook-amendments)

**4.15** The aim of our market studies is to understand the market causes of threats to our strategic objective, using evidence of how consumers behave and react to firms' actions plus analysis of what firms do and why.

**4.16** Our competition remit also covers:

- Examining the business models of the firms we regulate and building competition considerations into the design of our policies, regulatory interventions and remedies. For example, we will look at whether our authorisation requirements create undue barriers to new firms entering markets.
- We also looking beyond our regulatory perimeter to consider competition issues that may affect the markets we regulate. We address these issues by working in collaboration with UK and EU competition authorities.<sup>82</sup>

### **Our understanding of competition**

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**4.17** We use the following principles in our competition work:

- Competition is a process of rivalry between firms seeking to win customers' business over time. Competition provides incentives for firms to discover and meet consumer demands as efficiently as possible. Effective competition can lead to lower prices, greater innovation, better design, better quality and wider choice, which ultimately leads to consumers being better off and growth in the economy.
- It is the process of competition that needs to be protected and promoted, not specific competitors. In other words, what matters are the outcomes that competition delivers to consumers, and not whether any specific firm can survive in a market. Over time, we expect competitive markets to encourage efficiency, so less efficient firms will have incentives to become more efficient and will suffer economic consequences if they do not, while more efficient rivals will thrive. However, we recognise that this exit process needs to happen in an orderly way which ensures appropriate consumer protection (eg via the client assets regime) and does not threaten financial stability (as managed under the resolution regime).

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<sup>82</sup> From 1 April 2015, we have also been able to address competition issues using our concurrent competition powers.

### 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 firms could waste considerable resources with no result. We saw this as a potential deterrent to new entrants, so we worked with the PRA to make it simpler.<sup>83</sup>

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 has made it easier for new market participants to enter, so promoting competition in this market. There has been a marked increase in the number of firms in pre-application discussions with both the PRA and the FCA since the review into the requirements for firms entering into or expanding in the banking sector. In the 12 months to 31 March 2014, three of the five entities authorised as banks used the mobilisation option, and a number of firms in the pre-application stage also showed interest.<sup>84</sup>

### How we assess competition

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- 4.18** We apply a holistic approach to assessing whether competition in markets is working well for consumers.
- 4.19** In assessing whether intervention is needed, we consider a range of market failures including:
- **Unilateral market power.** Where a firm has such market power that it can behave to an appreciable extent independently of its competitors, customers and ultimately of consumers, then its actions may distort competition. We may assess market power by considering levels of concentration, capacity constraints, the substitutability of products that the firm supplies and supply-side constraints (i.e. the constraints exerted by current rivals and the threat of potential entrants).
  - **Barriers to entry and expansion.** These may include existing regulation, which might have adverse effects on competition, for example, by making it more difficult for firms to enter or grow. Another potential barrier to entry is the existence of network effects. These happen when a service becomes more attractive the more that others use it and, as a result, the existing supplier(s) benefit(s) from a virtuous circle that other suppliers may struggle to compete against.
  - **Coordinated conduct by firms.** Where supposedly rival firms stop actively competing, and either expressly agree, or tacitly coordinate their conduct, then markets become less competitive and consumers face worse outcomes. Certain characteristics of a market may make it easier for firms to coordinate.

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<sup>83</sup> [www.fca.org.uk/firms/about-authorisation/dual-regulated-firms/banking-applications](http://www.fca.org.uk/firms/about-authorisation/dual-regulated-firms/banking-applications)

<sup>84</sup> A review of requirements for firms entering into or expanding in the banking sector: one year on, FCA/PRA, 7 July 2014. [www.fca.org.uk/your-fca/documents/barriers-to-entry-one-year-on](http://www.fca.org.uk/your-fca/documents/barriers-to-entry-one-year-on)

- **Vertical relationships.** Relationships between firms active at different levels of the supply chain, or structural links where firms are active at more than one level of the supply chain can create efficiencies. However, this can also reduce competition in certain circumstances (such as where the integrated firm has the ability to exclude rivals).
- **Weak customer response.** Competition becomes weakened if customers cannot access, assess and act on information about the services they want. This can happen when, for example, firms produce complicated, confusing or unclear customer information or if there are high barriers to searching or switching for customers.<sup>85</sup>
- **Principal-agent problems.** Competition can be distorted if an agent (eg. adviser) has more information about a product or service than their principal (eg. customer taking advice) and if the agent has incentives that do not match the interests of their principal. So, for instance, if customers are not clear on the best service for them (ie. do not have as much information as their advisers), and advisers receive greater commissions for directing them to some suppliers rather than others, competition may be distorted.

**4.20** We decide if these factors mean we will intervene on a case-by-case analysis.

**4.21** Identifying competition issues requires detailed analysis and understanding of the competitive constraints on firms. We generally analyse competition within a market framework, examining the strength of constraints from competition on individual suppliers and products. We will examine how strong these competitive constraints are by looking at factors including:

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

**4.22** We also examine whether these constraints apply locally or regionally, nationally or internationally.

#### Identifying and prioritising issues

**4.23** 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.

**4.24** Identifying markets that appear not to be working well involves a number of steps and workstreams, forming a view on the issue in question as well as gathering relevant information from a range of sources, such as:

- super-complaints
- market intelligence
- complaints from third parties
- the FCA Panels
- insight and evidence from across the FCA

<sup>85</sup> See also our occasional paper about behavioural biases: *Applying behavioural economics at the Financial Conduct Authority, Occasional Paper No. 1*, 10 April 2013. [www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-1](http://www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-1)

**4.25** Our strategy puts significant emphasis on developing a common view of issues and risks in the markets we regulate. This shapes our priorities, including identifying which markets to investigate using market studies.

**4.26** Properly understanding the nature and extent of competition in any market is complex. We cannot study every market, so must choose which markets or aspects of markets to study. Where we identify concerns, we review the market in greater detail and decide whether we need to intervene on a case-by-case basis. We will consider several factors when deciding whether to open a market study. These include the likely impact of any intervention, how the concern fits with upcoming regulatory developments, whether the market has experienced, or is likely to experience, significant non-regulatory change, the scale of potential consumer harm and the likelihood of a successful outcome.<sup>86</sup>

**4.27** While significant consumer harm can result from weak or ineffective competition for existing services, we will also examine how competition is evolving in markets for new services. This will help ensure that the regulatory measures we adopt to advance our competition objective support innovation and reduce the risk of significant harm arising in the future for consumers.

#### **Using detailed studies to review markets**

**4.28** We carry out detailed market studies to analyse the effectiveness of competition in those areas where we have concerns and, if it is ineffective, the reasons why. We may carry out market studies either under our powers under FSMA or under our concurrent competition law functions and the provisions of the EA02.<sup>87</sup> When conducting market studies, we look at different features and explore the issues in their specific context.

**4.29** We announce the launch of any market studies we carry out.<sup>88</sup>

**4.30** Statutory requirements, including consultation and assessment of proportionality apply to any new rules that we propose as a result of a market study.

**4.31** 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 be completed within a year from launch.

**4.32** We try to be clear about the issues that concern us and any '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 also provide a clear point of contact for stakeholders.

**4.33** We gather specific information from a broad set of stakeholders, and receive information from various sources, such as:

- data we already hold or can access information and evidence provided to us by the FCA's Panels
- the firms we regulate, using our information-gathering powers where necessary

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<sup>86</sup> See also our Feedback Statement, Wholesale sector competition review 2014-15, February 2015. [www.fca.org.uk/static/documents/feedback-statements/fs15-02.pdf](http://www.fca.org.uk/static/documents/feedback-statements/fs15-02.pdf)

<sup>87</sup> Our process for market studies is set out in *Market Studies and Market Investigation References*, A guide to the FCA's powers and procedures, July 2015 available here [www.fca.org.uk/static/documents/finalised-guidance/fg15-09.pdf](http://www.fca.org.uk/static/documents/finalised-guidance/fg15-09.pdf)

<sup>88</sup> [www.fca.org.uk/news/list?ttypes=Market+study&](http://www.fca.org.uk/news/list?ttypes=Market+study&)

- firms, organisations and/or individuals 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)
- consumers

**4.34** We gather information using questionnaires to firms, desk research, surveys, behavioural research, mystery shopping exercises and working with other regulators.

**4.35** We normally publish an interim report, including possible solutions for addressing any concerns identified. We also assess the proportionality of proposed interventions before going ahead.

**4.36** Once our study is complete we publish:

- a description of the market(s) and issue(s) under consideration
- the reasons for carrying out the study
- a description of the methodologies used to collect and analyse the data
- our analysis
- our responses to feedback received and our analysis
- our conclusions on the issues considered

**4.37** If we propose remedies that require formal consultation, we may consult on these before or at the same time as our final report is published.

**4.38** Sometimes we will come across issues that we consider could be better handled by other consumer or regulatory bodies. In these cases we will liaise with the relevant agency, to ensure that the issue is dealt with by the most appropriate body.

#### **Actions following market studies**

**4.39** 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:

- Market-wide remedies, including, but not only:
  - Rule-making – This includes changing or potentially withdrawing existing rules and making recommendations to the PRA to change or withdraw rules.
  - Publishing general guidance – This includes guidance issued under section 139A about the operation of FSMA or specified parts of it and any rules made using the rule-making powers, guidance about any of FCA's functions and guidance with respect to any other matter on which it appears to desirable that we provide information or advice.
  - Proposing enhanced industry self-regulation – This refers to providing the financial services industry with an opportunity to develop measures that ensure compliance and improve consumer welfare.

- Firm-specific remedies. This includes own initiative variation powers or own initiative requirement powers<sup>89</sup>, cancelling permissions, public censure, imposing financial penalties, suspension or restriction, as well as filing for injunction orders or restitution orders.
- Making a market investigation reference (MIR) to the CMA. The purpose of an MIR is typically to investigate markets where it appears that competition is adversely affected by the structure of a market, by the firms operating in the market or by conduct of the firms' customers or suppliers. We may also accept undertakings from firms that they will make the necessary changes themselves, rather than make a reference.

**4.40** We may decide to take no further action for the time being. This could be because our concerns are likely to be satisfied by upcoming legislative measures, action by the relevant firms, or other circumstances. In such cases, we may continue to monitor the market in case our concerns are not addressed.

**4.41** We may seek a package of interventions; for instance, we might make an MIR, but deal with a discrete issue identified in our market study if it can be addressed appropriately through use of our other tools.

**4.42** The nature of our action depends 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).

**4.43** We need to show that any intervention is effective and proportionate to the concerns we have identified. For example, structural measures are more intrusive than behavioural measures, so when we consider structural measures we need to show that this degree of intrusion is justified and that behavioural remedies would not adequately address our concerns.

**4.44** We normally complete the inquiry and investigation stages of a market study before developing 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.

#### ***Third party complaints, cartels and enforcement***

**4.45** Anyone who has concerns about activities that cause, or potentially cause, harm to consumers can contact us to let us know e.g. through our whistle-blowing website or by email.<sup>90</sup> Where we see evidence that a cartel is involved, we may investigate it and, if appropriate, take enforcement action, or pass the matter on to the CMA under the concurrency regime.

**4.46** We also recently introduced rules to clarify the requirement on firms to give us the facts and circumstances of any significant competition breaches.<sup>91</sup>

**4.47** Additionally, under leniency arrangements, those who have participated in cartel activity such as price-fixing or market sharing can choose to give detailed confessions of their infringements in return for significant reductions in, or complete immunity from, penalties for that infringement.

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89 The FCA may vary a firm's permission on its own initiative or impose a requirement on a firm on its own initiative under section 55J or 55L of FSMA. [www.fshandbook.info/FS/index.jsp](http://www.fshandbook.info/FS/index.jsp). From 1 April 2015, the FCA also has powers to take enforcement action against infringements of CA98 which might be identified in the course of its market study. The CMA has concurrent functions in this respect.

90 [www.fca.org.uk/whistleblowing](http://www.fca.org.uk/whistleblowing). Complaints can be sent to us at [CompetitionMailbox@fca.org.uk](mailto:CompetitionMailbox@fca.org.uk).

91 See rules introduced in SUP15/3 set out in CP15/01: [www.fca.org.uk/static/documents/consultation-papers/cp15-01.pdf](http://www.fca.org.uk/static/documents/consultation-papers/cp15-01.pdf).

We will have regard to the CMA's Penalties guidance and will apply the CMA's leniency policy when pursuing enforcement under CA98.<sup>92</sup>

**4.48** 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***

**4.49** 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 requirements<sup>93</sup> and we will take into account our competition objective in doing so.

**4.50** 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.

**4.51** For example, we can object to an RIE's proposed regulatory provision if we judge it to be unjustified or disproportionate.<sup>94</sup> We will examine the impact of a provision on competition when making our assessment.

### **Working with others**

#### **The broader competition landscape**

**4.52** 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.

**4.53** In the UK, the NCAs are the CMA and those sectoral regulators (for example, Ofcom, Ofgem, and Ofwat) with powers to apply competition law in the sectors they regulate. We became an NCA on 1 April 2015, when we gained concurrent competition powers.

**4.54** We are part of the UK Competition Network<sup>95</sup>, which allows us to collaborate with other members (the CMA, and other sectoral regulators) by, for example, sharing best practice and enhancing capabilities to promote competition for the benefit of consumers. Where there could be potential overlap in responsibilities, this network should enable the best placed organisation to lead on particular issues.

**4.55** We are also a member of the UK Regulators' Network<sup>96</sup>, which is an initiative of the nine UK economic regulators, including the FCA. The three main objectives of the network are to:

92 See OFT423 (*ibid*) and OFT1495 *Applications for leniency and no-action in cartel cases-*

*OFT's detailed guidance on the principles and process*

([www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284417/OFT1495.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284417/OFT1495.pdf))

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

94 These powers were included in FSMA by the Investment Exchanges and Clearing Houses Act 2006.

95 [www.fca.org.uk/about/what/promoting-competition/working-with-other-regulators](http://www.fca.org.uk/about/what/promoting-competition/working-with-other-regulators).

96 The MoU between members of the UK Regulators' Network can be found at [www.ukrn.org.uk/wp-content/uploads/2014/05/UKRN-Memorandum-of-Understanding.pdf](http://www.ukrn.org.uk/wp-content/uploads/2014/05/UKRN-Memorandum-of-Understanding.pdf)

- improve the consistency of economic regulation across transport, energy, water, communications, financial services and other regulated sectors
- deliver efficiency of economic regulation
- improve understanding of how independent economic regulation works in the interests of consumers, markets, investment and economic performance

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

**4.57** The Financial Services (Banking Reform) Act 2013 introduced a secondary competition objective for the PRA. When pursuing its primary prudential objectives, 'the PRA must so far as is reasonably possible act in a way which [...] facilitates effective competition [...]'.<sup>97</sup> The PRA's secondary competition objective should be seen as complementary to, rather than equivalent to, our primary competition objective.<sup>98</sup> We consult with the PRA on the prudential implications of potential competition remedies.

#### **Working with the CMA**

**4.58** The FCA and the CMA have signed a MoU, which sets out how we work together.<sup>99</sup> 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 CMA, making financial markets work well for consumers.

**4.59** If we decide not to take a competition issue further, this does not stop the CMA 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.

#### **Payment Systems Regulator**

**4.60** On 1 April 2014, the Payment Systems Regulator (PSR) was established as a wholly-owned subsidiary of the FCA. It is responsible for the £75 trillion payment systems industry and is a separate legal entity with its own statutory objectives and board. Its objectives are to promote competition<sup>100</sup> and innovation, and to ensure responsiveness to business and consumer needs.<sup>101</sup>

#### **EU and international considerations**

**4.61** As a National Competition Authority (NCA), we must apply Articles 101 and/or 102 TFEU when applying Chapter 1 and/or 2 of CA98 to agreement or conduct that affects trade between member states. As an NCA we are also a member of the European Competition Network and we have signed a statement acknowledging the principles set out in the Commission Notice on Cooperation within the Network of Competition Authorities.<sup>102</sup>

**4.62** We will cooperate where regulatory decisions at a European level raise competition issues and we will recommend issues are raised at the EU level if appropriate.

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97 Financial Services (Banking Reform) Act 2013 section 130 (1) inserted 2H into FSMA.

98 Prudential Regulatory Authority (2014), 'PRA Statement of strategy', 10 March 2014.  
[www.bankofengland.co.uk/pradocuments/supervision/stratstate.pdf](http://www.bankofengland.co.uk/pradocuments/supervision/stratstate.pdf)

99 [www.fca.org.uk/your-fca/documents/mou/mou-between-the-fca-and-cma](http://www.fca.org.uk/your-fca/documents/mou/mou-between-the-fca-and-cma)

100 The PSR can, if appropriate take enforcement action, or refer matters to the CMA under the concurrency regime.

101 [www.psr.org.uk/about-psr/psr-purpose](http://www.psr.org.uk/about-psr/psr-purpose)

102 Official Journal C 101, 27.04.2004, p. 43.

### Super-complaints

- 4.63** Super-complaints help alert us to competition issues, or other matters against consumer interests.
- 4.64** Only consumer bodies designated by HMT can bring super-complaints. These are Which?, Consumer Council Northern Ireland, Citizens Advice and The Federation of Small Businesses (FSB). They can make a complaint to us that a feature or combination of features of a UK market for financial services is, or appears to be, significantly damaging consumer interests.
- 4.65** 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.
- 4.66** We have published guidance<sup>103</sup> on super complaints, which sets out our requirements for the quality of evidence supplied. Complainants must make a reasoned case for complaint. We may also carry out wider enquiries, to test the evidence provided and obtain further information to help us come to a view on whether to act further. We decide how to do this on a case-by-case basis, and may include gathering information from firms, business representatives, consumer organisations, government departments and/or other public bodies. We must respond to a valid super-complaint within 90 days.

<sup>103</sup> FG13/1: – *Guidance for designated Consumer Bodies on making a Super-Complaint under s234C*; FG13/2 – *Guidance for Regulated Persons and The Financial Ombudsman Service on making a reference under s.234D*; FG13/1 and 13/2: *Summary of Feedback received*; 25 June 2013. [www.fca.org.uk/news/fg13-01-designated-consumer-bodies](http://www.fca.org.uk/news/fg13-01-designated-consumer-bodies). This guidance should be read in light of the fact that, following the commencement of amendments to FSMA made by the Financial Services (Banking Reform) Act 2013 (FS(BR)A), a super-complaint cannot be made to the FCA if it is a complaint which could be made to the Payment Systems Regulator by a designated representative under section 68 FS(BR)A.

# Annex 1

## How we operate under law

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1. FSMA gives us a single strategic objective<sup>104</sup>, which is supported by three operational objectives.

### Our strategic objective

2. Our overarching strategic objective is to ensure that the relevant markets work well.<sup>105</sup> 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)
3. When we carry out these functions, we must act, so far as is reasonably possible, in a way that is compatible with our strategic objective.

## Our operational objectives

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4. We have three operational objectives.<sup>106</sup> 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.

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<sup>104</sup> FSMA Section 1B (2) The FCA's strategic objective is: ensuring that the relevant markets (see section 1F) function well.  
<sup>105</sup> 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.  
<sup>106</sup> Section 2 of the Financial Services (Banking Reform) Act 2013 amends FSMA to give the FCA an additional 'continuity' operational objective, but only in the event that the FCA becomes responsible for regulating a "core activity" (the banking activities on which households and small businesses depend). We understand that the Government currently plans to bring this provision into effect from 2019 at the earliest, and even then there will be no change to the FCA's objectives, unless and until any FCA-regulated activity becomes a core activity. However the FCA will consider what additional s1K guidance is necessary should the FCA become responsible for regulating a core activity.

### The competition duty

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5. In addition to our strategic and operational objectives, we have a further responsibility known as the competition duty when discharging our general functions.
6. This duty requires us to 'promote effective competition in the interests of consumers' so far as this 'is compatible with acting in a way which advances the consumer protection and integrity objective'.<sup>107</sup>
7. As a matter of policy we normally aim to choose the most pro-competitive measure open to us provided that it is compatible with our duties as a whole. In practice, we will consider how to apply this on a case-by-case basis.

### The consumer protection objective

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8. Broadly, we must protect consumers from actual or potential financial harm.
9. '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
  - have rights, interests or obligations that are affected by the level of a regulated benchmark<sup>108</sup>
10. 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

<sup>107</sup> and the continuity objective (see above).

<sup>108</sup> The full statutory definition of 'consumers' can be found in FSMA Section 1G.

- 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**

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- 11.** 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
  - the transparency of the price formation process in those markets.
- 12.** 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**

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- 13.** 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
- 14.** As noted above, we also have a competition duty when pursuing our other objectives.

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## Regulators' Principles and Code

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15. When exercising our functions, we are also required to have regard to the following regulators' principles and code<sup>109</sup>:
- **Regulators' Principles**
    - a. Regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent
    - b. Regulatory activities should be targeted only at cases in which action is needed
  - **Regulators' Code**
    - 1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow
    - 2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
    - 3. Regulators should base their regulatory activities on risk
    - 4. Regulators should share information about compliance and risk
    - 5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
    - 6. Regulators should ensure that their approach to their regulatory activities is transparent.

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<sup>109</sup> The *Regulators' Code* published in April 2014 updates the *Regulators' Compliance Code* published in 2006 under Part 2 of the Legislative and Regulatory Reform Act 2006. It applies to a number of UK regulators including the FCA. More detail can be found at [www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code).

## Glossary

*Italicised words* have definitions in the glossary.

**Approved persons** – an *approved person* is an individual who has been approved by the FCA and/or the PRA 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.

**Consumer spotlight model** – a consumer segmentation 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.

**Controlled functions** – these are the roles that *approved persons* are authorised to perform in their organisation. 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.

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

**Super-complaints** – a process where some 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*) – refers to how we look at conduct risks across a market or sector, 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.



**PUB REF: 005005**

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