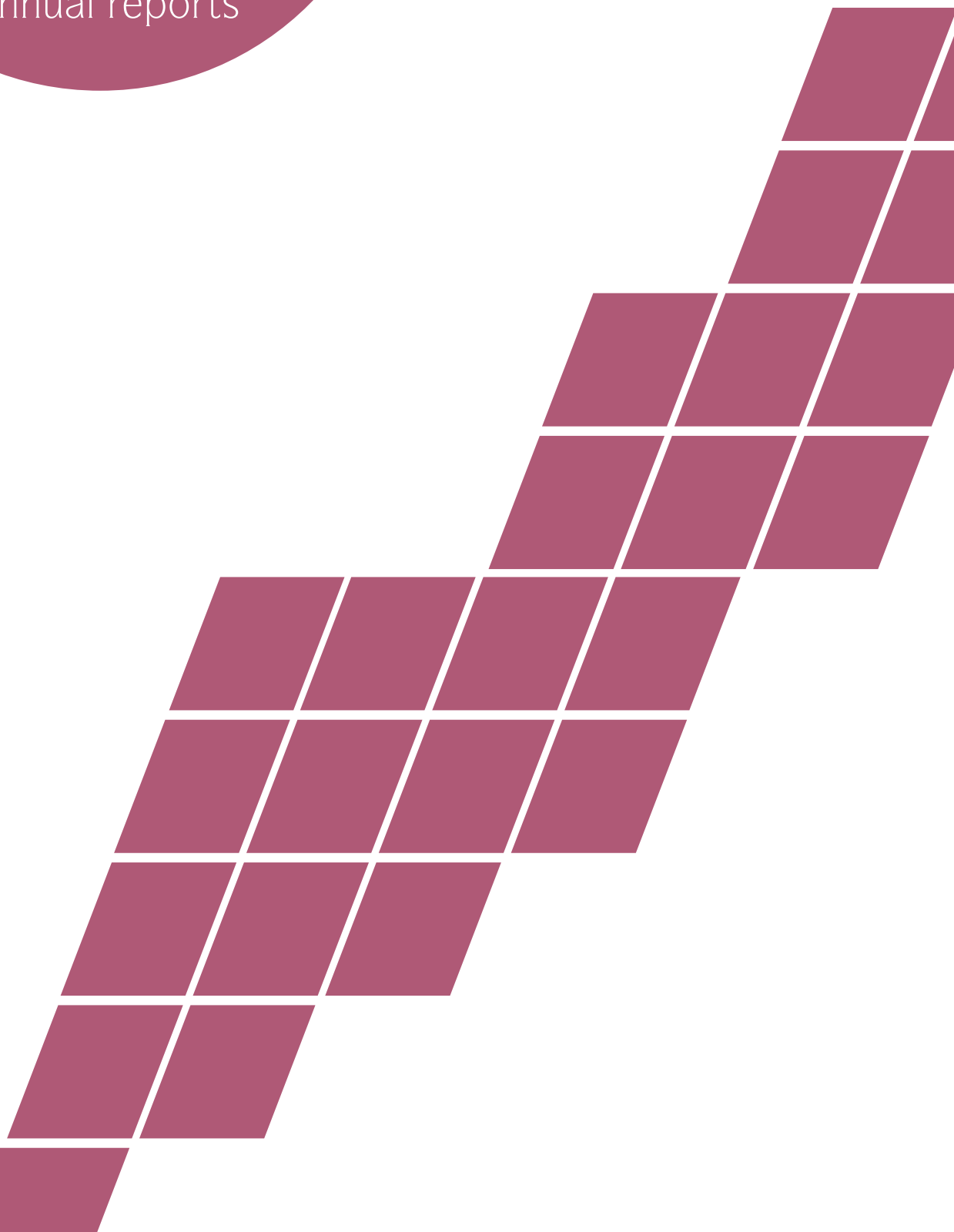




Our response to key  
comments from the  
independent panels'  
annual reports





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# Introduction

During the course of our work we welcome the requirement to consult with four panels that represent the interests of consumers, practitioners, smaller regulated firms and markets. They work to advise and challenge the FCA.

We work with the panels throughout the year on a wide range of subjects. We value their experience, advice, support and expertise in identifying risks to the markets, the insight they provide us on consumer issues, and their distinctive points of view on different issues. We consider their views when developing our policies and when determining and implementing other regulatory interventions.

The Panels each publish annual reports that detail their activities for the year and comment on our work, which we respond to here.

## The FCA statutory panels

### The Consumer Panel

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Represents the interests of consumers, monitors how far we fulfil our statutory objectives in relation to consumers, and provides us with advice and challenge.

### The Practitioner Panel

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Represents the interests of practitioners, and provides us with external input from the point of view of the industry as a whole.

### The Smaller Business Practitioner Panel

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Represents smaller regulated firms, who may otherwise not have a strong voice in policy making.

### The Markets Practitioner Panel

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Represents the interests of practitioners who are likely to be affected by our functions relating to markets.



# Key themes

A number of issues were raised by more than one panel.

## Communicating with firms and consumers

All the panels raised our communication strategy and the challenge we received this year by the Davis Review of the launch of the 2014/15 Business Plan.

The Practitioner Panel and the Markets Panel both called for an approach that is based on fact and evidence and does not court headlines to seek coverage. The Markets Panel also mentioned applying an appropriate level of control over the approval process for external publications.

Some panels also expressed their support of our credible deterrence strategy. They encouraged us to consider the tone and content of communications relating to the outcomes of enforcement action to avoid potentially undermining trust in firms and the industry more generally.

*During the year we reviewed and changed our communications strategy and have taken into account the comments made by the different panels. We made significant changes to the approval process of external publications and tightened the controls we apply to them. In addition, we implemented the recommendations made in the Davis report in this regard.*

*Our communications strategy also considers our tone of voice and the required balance between making the outcomes of enforcement action public to support our credible deterrence strategy with the risk of potentially undermining trust in firms and markets.*

The Smaller Business Practitioner Panel highlighted a lack of engagement with the regulatory agenda by smaller firms, which it attributes either to the firms not getting the message, or not applying the messages. It highlighted the importance of communicating effectively with smaller firms and advised we adopt more targeted communications towards smaller firms,

rather than via the national media. It also noted a potential gap in sharing thematic reviews with firms that do not have supervisors.

Similarly, the Consumer Panel highlighted the importance of communicating effectively with consumers.

*Last year we continued work on communicating with firms, including smaller firms, through targeted communications such as the 'regulation round-up' newsletter we send to all regulated firms. We also continued to provide firms with tools and webinars on specific issues, for example on consumer credit authorisations and financial crime.*

*Our website holds a wealth of information on the work we do and our expectations from regulated firms, including examples of good practice. We also publish reports of thematic work on our website on a regular basis. We are committed to continuing to make improvements in our communications with smaller firms, and see it as an area of particular focus going forward.*

*While we make efforts to communicate clearly and effectively with smaller firms, it is the firms responsibility to ensure that they are compliant with regulation. Where we identify that firms are not complying with our rules we take remedial action.*

Similarly, the Consumer Panel highlighted the importance of communicating effectively with consumers.

*We are continuing to work on how we communicate with consumers, and on how we expect firms to communicate clearly. In June we published a discussion paper – Smarter Consumer Communications - which encourages firms, consumer groups, and stakeholders to work together to deliver information to consumers in smarter and more effective ways. As part of this, we draw on behavioural insights and innovative practices from within and outside the UK financial services sector, to work with firms to identify improvements in the industry's consumer communications.*



## Cost of regulation and proportionality

The Practitioner Panel raised a concern about the increase in fees required from the industry for the FCA for 2015/16, as well as an increase in concerns about the cost of regulation. The Smaller Business Practitioner Panel raised a related point about proportionality of regulation and a risk of unintentionally overburdening smaller firms with regulatory responsibilities.

*We are committed to offering value for money in the way we operate, and were pleased to note the findings of the Practitioner Panel survey which acknowledged an increase in firms' perceptions of the effectiveness of the regulator. The increase in our budget is driven by an increase in headcount to help us deliver our competition objective, maintain our work on protecting consumers, undertake more enforcement activity to combat market abuse and unauthorised business, and enhance our supervisory model for benchmarks. We are also investing in Project Innovate, our new initiative to ensure the regulatory environment is supporting innovation in the market.*

*This will be supported by our ongoing work to upgrade and improve our information systems (IS) and technology platform to ensure that our systems efficiently support our key regulatory functions. We will also continue to invest in the FCA Academy to offer continuous, relevant training and development to our people.*

*Our strategy (published in December 2014) puts great emphasis on improving efficiency and enabling faster decision making and more effective prioritisation across the organisation. Work is underway to deliver better value for money and robust and efficient prioritisation decisions, including a comprehensive efficiency review.*

*We will continue to take a proportionate, judgement-based approach to regulation, assessing the risk a firm poses to our objectives and focusing resources on the higher-risk firms. We consider the needs of smaller firms in a wide range of areas including our policy making, data collection, and supervisory approach. We provide a few examples below.*

*Our new strategy approach places greater emphasis on competition and taking a more market wide approach to regulation. We are shifting our approach to supervision for smaller firms, removing the distinction between C3 and C4 firms, supervising individual firms on a more risk-based model, and removing much of our standard Pillar 1 activity for those firms.*

*In policy making, our final rules on accountability, published in CP15/22, bring in new standards for deposit-takers of all sizes, and we have sought to deliver an inherently proportionate regime for firms of varying sizes. Our Senior Managers Regime (SMR) applies only to those individuals who are responsible for managing a firm's affairs. So, where a firm is directed by only a small number of people, few individuals will come under the regime. Similarly, a small firm's 'responsibilities map' can be very simple – we have even included guidance in our Handbook to make clear that, it may be no more than a single sheet of paper (and, in CP15/22, we also included an example responsibilities map for a credit union, to help illustrate how it might look).*

*Another example relates to our rules on mutual society shares compared to the rules we applied for contingent convertible securities (CoCos). We are mindful that mutual societies, particularly the smaller societies, may have little access to institutional markets to raise regulatory capital. We therefore introduced new requirements applying to the distribution of mutual society shares that are less restrictive than for CoCos and allow distribution to ordinary retail investors, subject to certain safeguards (see CP14/23 and PS15/14).*

*We also recently consulted on a new 'complaints return', by which firms are required to send us twice a year data on the number of complaints they receive. In order to reduce the administrative burden on smaller firms, we are proposing to introduce a simplified, shorter form for firms which receive fewer than 500 complaints in each reporting period.*

*Our approach to data collection also takes a proportionate approach to reduce the burden for smaller firms. This includes requiring smaller firms to complete less detailed returns, and to submit returns to us less frequently than larger firms. Examples of this include -*

- The majority of consumer credit firms with limited permissions are only required to complete a stripped down return as opposed to the more detailed responses required in the other consumer credit returns.*
- Other consumer credit returns (CCR001-CCR006) are scheduled annually for firms with revenue from credit-related regulated activities up to and including £5 million, and half yearly for firms with an annual revenue from credit-related regulated activities over £5 million.*

## Financial advice and the retail distribution review (RDR)

The Panels noted the positive outcomes of our work on the RDR, in removing producer bias and increasing the standard of professionalism.

The need to better communicate the status of advisers to customers was highlighted, with concerns raised about the definition of 'independent' advice as opposed to 'restricted' advice, which the panels consider to be potentially confusing for firms and consumers alike.

The Consumer Panel raised concerns about whether consumers can get the financial advice they need, especially in light of the pension reforms. It highlighted the risk of availability and that consumers might be pushed towards the 'non-advised' route. The Practitioner Panel highlighted the need for clear disclosure not only of costs, but also the level of service being provided, and what is expected of consumers themselves.

*We are addressing the issue of communication as part of our ongoing work on 'smarter consumer communication' and are considering the suggestions made by the panels.*

*Throughout 2014/15 we continued our programme of positive compliance workshops across the UK, which focused on the RDR. These workshops offered firms and individuals an opportunity to hear directly from us about the main requirements of the RDR and covered the issues of independent vs. restricted advice, disclosure and adviser charging.*

*In January 2015, we published finalised guidance on retail investment advice, to further clarify the advice boundaries. Alongside clarifying the current regulatory landscape on personal recommendations in relation to retail investments, we also provided detailed example scenarios and in each case offered a view on whether we think the example is regulated advice or not.*

*The issues of availability of advice and clear disclosure of costs are also high on our list of priorities. In December 2014 we published the results of analysis into the possible existence and size of an advice gap in the UK retail investments market and we continue to monitor and assess the issue.*

*In April 2015 we began scoping and planning a follow-up to the competition market study into the outcomes consumers receive from the products and services they buy at retirement. We will look at both advised purchases (reviewing the suitability of advice given) and non-advised purchases (reviewing the information provided). We would expect to launch this work in early 2016 once we have a greater evidence base of actual outcomes.*

*In addition, in this year's business plan we outlined our intention to launch a market study into Emerging Distribution Models for retail investments. This work is currently being scoped.*

## Pensions – Guidance Guarantee

The Smaller Business Practitioner Panel raised concerns that it will be difficult for guidance to remain at the generic level for long, and that as soon as consumers have any relatively common complexities there will need to be a handoff to regulated advice. It emphasised the need for the FCA to monitor the handoff process.

*The role of Pension Wise is to highlight options available to consumers, and how these options relate to their personal circumstances. For many consumers this will be sufficient to help them take an informed decision about how to use their retirement savings.*

*For consumers who need more, the standards we set for Pension Wise include a requirement to refer a consumer to a directory or other list of financial advisers or providers of financial services or products. We will be monitoring Pension Wise providers' compliance with this standard, alongside each of the other standards, and will take appropriate action where we feel any of them are not being met.*

*We will be reviewing our pension rules in the light of the experience in the new landscape and intend to publish a consultation in September 2015.*

The Consumer Panel was broadly supportive of our proposals for pensions reform. It was concerned about the decision to let delivery partners interpret the principle based standards, which it believes has the potential for guidance to look different depending on the delivery partner.

*We have worked closely with the Treasury to support their development of the guidelines for the conversations that the guidance partners will hold with individuals.*

*We have also introduced a robust regime for monitoring the Pension Wise against the standards we have set and published. These include the topics that must be covered by guidance providers and a requirement that the guidance provided should be consistent across all providers. We will be monitoring the performance of the providers over the coming year and working with them where we believe standards are failing to be met.*

*This summer we will be publishing final details of our Pension Wise - recommendation policy - our policy for making recommendation to the designated guidance providers and the Treasury - in the event that we remain unsatisfied that our standards are being met.*

## Accountability

The Smaller Business Practitioner Panel recommended that we take a differentiated approach to large and smaller firms in applying the Senior Managers Regime, and highlighted that the burden on some small and medium-sized firms to implement the new accountability rules can be substantial.

The Practitioner Panel expressed a view that potential difficulties might arise in attracting and retaining talented individuals to senior positions if they perceive that they will be held responsible for actions that they could not reasonably be expected to influence.

The Consumer Panel highlighted the issue of 'grandfathering' of existing senior managers into the new authorisation system, which it believes might mean that the new rules will take many years to be effective.

*In July 2014 we consulted, jointly with the PRA, on a new regulatory framework for individual accountability in banking. We provided feedback on the responses received to the consultation and set out our policy intentions as a result in March 2015. We are also consulting on new guidance on the circumstances in which we would seek to apply the presumption of responsibility.*

*We are subject to legislative developments that may determine how the accountability regime will apply to the financial sector in general. We remain committed to proportionality as a principle of good regulation, and are aware of the differences between smaller and larger firms. We also believe that attracting and retaining talented individuals in financial services is important, and consider the effectiveness of the new rules to be crucial.*





# The FCA Smaller Business Practitioner Panel

## FCA data collection and usage

The panel welcomed our pragmatic approach to collecting data, and appreciated the efforts being made to coordinate data collection, both within our own organisation and with the PRA. However, it mentioned that firms continued to experience difficulties in complying with data requests.

*Our data strategy puts great emphasis on reducing the burden on firms to comply with data requests. We govern and control data requests to firms, and aim to make them clearly specified and fit for purpose, and collected appropriately. We continue to implement our data strategy and are considering new ways to further reduce the burden on firms.*

## The regulation of consumer credit

The panel noted the huge task we have taken on in regulating consumer credit firms over the past year. It praised the constructive and useful discussions it had with the Authorisations team about consumer credit permissions within specific sectors.

It noted that some confusion might exist about exactly which permissions are required and suggested that we could provide more tips and examples for those going through the more complex aspects of the authorisation process.

*We are making efforts to provide the right information in the best way to consumer credit firms seeking authorisation. For example, our website contains a lot of information on how to prepare for authorisation, including a step-by-step guide to authorisation, a jargon buster, and various videos.*

*We will continue to engage with consumer credit firms in the coming year and will make all the relevant data available to them in an accessible way.*



# The FCA Practitioner Panel

## Price cap on high-cost short-term credit

The panel noted the extensive research work behind our proposals on applying a cap to the cost of high-cost short-term credit, and was generally supportive of our proposals. It stressed the need for us to continue to work closely with the Illegal Money Lending Team to monitor trends in illegal lending.

A similar point was also raised by the Consumer panel which supported the FCA's swift and decisive action on high-cost short-term credit (HCSTC), but raised concerns about potential consequences of exclusion from the market, particularly of vulnerable consumers.

*We appreciate the panel's support in this matter and will indeed continue to work closely with the Illegal Money Lending Team to assess the impact the price cap on high-cost short-term credit might have had on illegal lending.*

## Innovation Hub

The panel raised a concern that, in regards to Project Innovate, we may be providing more help to new entrants than to existing firms. It considers that we should support new and existing firms equally to maintain competitiveness.

*The objectives of the Innovation Hub include supporting innovator businesses, new entrants and existing firms. The only deciding factor on whether we should support a business is based on our eligibility criteria, which apply equally to new entrants and existing firms. We review whether a business is genuinely innovative, the innovation has any identifiable benefit, appropriate investment in research and a need for support.*



# Consumer Panel

## Investment costs

The Panel highlighted the issue of the costs and charges consumers bear when investing in retail funds. It specifically referred to research commissioned by the panel, which suggested that retail customers do not know what costs they will face when they invest. The Panel recommended that the FCA should consider mandating a comprehensive single annual charge billed directly to the customer, with all other costs borne by the firm itself.

*The FCA is actively engaged in two European initiatives which will increase the transparency of all investment costs. The first is the Packaged Retail and Insurance-based Investment Regulation (PRIIPs) which will introduce a pre-contractual Key Information Document (KID) for investment products that will, amongst other things, set out all costs associated with the investment. The second is a new total cost disclosure requirement included in the recast Markets in Financial Instruments Directive (MiFID II). This will require an investment firm to disclose all charges associated with a financial instrument and associated service. Both initiatives will, once implemented, increase the transparency of investment costs, including those costs that have not typically been disclosed to consumers.*

*Earlier this year, we published a call for evidence jointly with the Department for Work and Pensions (DWP) which looked at the transparency of transaction costs in workplace pensions. In particular, that considered:*

- *what costs should be included in the transaction cost reporting*
- *how such costs should be captured and reported*
- *whether information about other factors that impact on investment*
- *return should also be provided*

*As a result of this work, information on transaction costs will be made available to workplace pension governance committees to enable them to scrutinise these costs and assess whether a scheme is providing value for money. We are currently reviewing responses to this call for evidence jointly with the DWP and will look to consult on draft rules towards the end of this year.*

*The FCA has also announced that it is undertaking a market study into asset management later in the year, the scope of which is currently being developed and will be set out in detail in Terms of Reference later in the financial year. To the extent that forthcoming regulations do not address the concerns raised with transaction costs, we may wish to consider this further in the market study.*

## Mortgages

The UK mortgage market is undergoing a great deal of change as a result of the Mortgage Market Review (MMR). The panel broadly welcomed the proposals to implement the European Mortgage Credit Directive by building on existing regulations wherever possible. They were pleased that, as part of implementation, the Government said it would move second charge mortgage regulation into the first charge regime. However, it was concerned about the 'regulatory gap' until March 2016 when the directive will be implemented.

The panel highlighted that its data has shown a big post-MMR shift to intermediated mortgage sales, which generally means the consumer pays the provider one or more fees, and that as mortgage interest rates have declined, the level of fees has increased, as has the type of 'non-product' services that attract a charge. The panel raised concerns that it is often not clear to consumers what proportion of fees is paid back to the intermediary as commission. The Panel believes it would be more helpful to consumers if lenders included all fees in a total costs figure that was presented in the advertised costs, and ensured non-product fees reflected their actual costs.

*Our existing rules, and those in effect from March 2016 when the Mortgage Credit Directive comes into force, require firms to disclose details of commissions received from third parties and, in product disclosure documents, the fees payable by a customer. For example, fees are included in a mortgage's annual percentage rate of charge, helping customers to compare the total costs of different loans. We also have rules prohibiting firms from imposing excessive charges on customers.*

*This autumn, and in support of our competition objective, we will begin a wider assessment of whether any aspects of the mortgage market are not working to the benefit of consumers. The Council of Mortgage Lenders (CML) and Which? are also currently working together to increase the transparency of mortgage fees and charges.*

## Consumers as 'co-regulators'

The panel set out to determine how information about enforcement action against regulated firms and individuals, and other public information about firms' behaviour, can empower consumers to make more informed decisions. It commissioned quantitative research, to get a consumer perspective on the types of information they used when making a financial decision and the additional information they might find useful.

*We thank the panel for the research and the insight it provides into consumers' perspective on the type of information they would find useful. We will continue to use this information and other sources of market research to better understand consumers in financial services, and to inform the best regulatory interventions and initiatives we undertake.*

## Accessibility and vulnerability

The panel highlighted issues of accessibility, vulnerability and financial exclusion. It supported our work on vulnerability and the resulting paper.

*We share the panel's views on the importance of financial inclusion and the fair treatment of vulnerable customers. In February 2015 we published an occasional paper on consumer vulnerability, launched by Martin Wheatley, at the British Bankers' Association conference. It is a first and important step in a conversation with firms to determine how the regulator and industry can work together to address issues around vulnerability.*



# The FCA Markets Practitioner Panel

## FCA restructuring

The panel highlighted the strategic changes and the internal restructure that separated the Markets Division into two new divisions. It noted that its initial concerns about a potential for a loss of focus on wholesale markets were later alleviated by the decision to split Supervision and to create a division focused on wholesale market participants.

The panel encouraged us to continue to review our arrangements between the relevant markets divisions to ensure a comprehensive and joined-up approach to wholesale market conduct regulation.

*Our new strategy puts greater emphasis on creating a common view of the markets and sectors we regulate, and on forming a sustainable model of regulation. We believe that this strategy and the structural changes made to support it will deliver a more joined-up approach in all the sectors we regulate, including in wholesale markets.*

## MiFID II

The panel highlighted a number of points in regards to the Markets in Financial Instruments Directive II, as well as risks and potential unintended consequences that it believes might arise.

*We appreciate the panel's advice and value its support to our efforts in ensuring that the interests of the UK are represented in the best possible way in current EU negotiations. We will continue to consider the panel's concerns and recommendations in influencing EU rules and implementing them in the UK.*

## Capital Markets Union

The panel highlighted the Capital Markets Union (CMU) plan of the European Commission (EC), as an area of priority, and submitted a response to the EC Green Paper.

*We value the support from the panel to our response to the CMU proposals and look forward to engaging further on this matter in future.*



**Financial Conduct Authority**

