Butterworths Financial Regulation Service

Bulletin editor
Abdul Karim Aldohni LLB, LLM, PhD
Senior Lecturer in Law, Newcastle Law School

RECENT DEVELOPMENTS UK

HM Treasury News

Government takes action to support pension savers

The Treasury is launching an immediate consultation and online survey to look at whether exit charges could be cut or capped for those looking to access their pensions early, and to ask pensioners and industry experts how to remove other barriers that may be stopping people enjoying the benefits of increased flexibility over their pension pot.

Both the Chancellor of the Exchequer, George Osborne, and Secretary of State for Work and Pensions, Iain Duncan-Smith, have raised concerns in recent weeks that some companies are failing to play their part in making pension freedoms available to savers.

The consultation will look at how best to remove barriers and in particular will investigate:

- options to address excessive charges for early exit penalties. This includes the option to impose a legislative cap on these charges for those 55 or over if there is sufficient evidence;
- how the process for transferring pensions from one scheme to another can be made quicker and smoother; and
- how to ensure that there is greater clarity around the circumstances in which someone should seek financial advice.

The Economic Secretary to the Treasury, Harriett Baldwin, and the Minister for Pensions, Ros Altmann, have also written to the Financial Conduct Authority ('FCA') and the Pensions Regulator ('PR') asking them to gather information from the industry on the fees and charges customers currently face. The PR and the FCA have already begun this important work.

The government's pension freedoms, which came into effect on 6 April, have already given over 85,000 people the opportunity to use their hard-earned savings how they want, with many providers offering their customers a range of options.

The government has also strengthened the right to transfer to a new pension scheme to enable people to shop around for the best deal. This consultation looks at what more could be done to ensure that everyone has the opportunity to transfer their pension at a reasonable cost and within a reasonable timeframe.

The consultation will run for 12 weeks and a response will be published in the autumn. The online survey will run alongside the consultation for 12 weeks and will form part of the government's response.

HM Treasury 30.07.15

Credit and debit card fees to be capped

The government has launched a consultation on new rules to cap fees charged by banks to their business customers for processing credit and debit card payments. These new rules, which are part of the Interchange Fee Regulation ('IFR') that the European Union ('EU') agreed earlier this year, introduce an EU-wide cap on the charges paid by a business when a customer pays for something using a card. From 9 December 2015 the fees banks can charge will be capped at 0.30% and 0.20% for credit and debit card transactions respectively.

The terms of the IFR require member states to designate a competent authority that is empowered to supervise the IFR and grant the competent authority appropriate investigation and enforcement powers in order to do so. Making sure that the EU has a competitive financial services industry that works in the interests of consumers and supports the wider economy is a key pillar of the UK's reform agenda, and tackling unfair card fees was a key recommendation of the Prime Minister's EU Business Taskforce.

The agreement secured on the Interchange Fee Regulation demonstrates how Europe can ensure that business and consumers alike benefit from the single market.

There were almost 10.7bn credit and debit transactions in Britain in 2013, and the British Retail Consortium has estimated that the agreement could save British businesses up to £480m a year.

The government would like to see this benefit passed on to consumers in the form of lower prices.

Separately, the EU is also close to finalising a revision of the Payment Services Directive ('PSDII'), to prevent businesses from making money from customers who choose to pay by card by capping or banning the practice completely (depending on the type of card).

Chancellor of the Exchequer, George Osborne, said:

> 'Ensuring the EU has a competitive financial services industry that works in the interests of consumers and supports the wider economy is a key pillar of our reform agenda.
>
> That's why we are determined to tackle the unfair fees that Britain's businesses are often charged when their customers pay by card – fees which are often passed on to consumers.
>
> And that's why I am delighted that we reached an EU agreement to reduce the fees that banks can charge businesses for processing card transactions. I expect businesses to pass on these savings to consumers in the form of lower prices.'

The IFR allows national governments to set caps below 0.30% and 0.20% for domestic credit and debit card transactions. In the consultation, launched on 27 July 2015, the government proposes implementing a 0.30% cap on domestic credit card fees, and an average 0.20% cap on domestic debit card transactions.

HM Treasury 27.07.15

Interchange fee regulation: a consultation

This consultation invites views on the government's proposed steps to meet the UK's obligation to put in place an adequate and efficient regulatory regime to supervise compliance with the IFR. It also seeks views on exercising the national discretions the IFR affords to member states; namely the way in which member states apply and set caps to interchange fee rates, and, based on an assessment of market shares, the application of a time-limited exemption period of up to three years to three-party card systems that use issuers or acquirers.

It is the government's intention to designate the Payment Systems Regulator ('PSR') as the overarching regulator for this purpose. The PSR launched on 1 April 2015 and is the economic regulator of payments systems in the UK. Its three objectives are to:

(1) ensure that payment systems are operated and developed in a way that considers and promotes the interests of all the businesses and consumers that use them;

(2) promote effective competition in the markets for payment systems and services – between operators, payment service providers and infrastructure providers; and

(3) promote the development of and innovation in payment systems, in particular the infrastructure used to operate those systems.

The PSR is the entity best-placed to supervise compliance with the IFR, given its expertise and oversight of the UK payments market. It also has statutory powers to request information from the operators, infrastructure providers and participants of any UK payment system in relation to its work. However, there are modifications and additions required to the PSR's existing powers to ensure that it can fulfil this role adequately.

To ensure the government implements an efficient and effective regulatory regime, it plans to assign a role to other regulatory bodies where IFR provisions fall under the scope of existing regulatory bodies. Although the PSR will be the overarching regulator, other bodies can act in conjunction with the PSR to address issues which span multiple remits.

The government's intended approach to the regulatory regime is as follows:

- monitoring and enforcement powers. The government's proposal is that a regime based closely on the enforcement regime that currently exists under the Financial Services Banking Reform Act 2013 would be appropriate. Some modifications and additions will need to be made to ensure that the PSR is fully equipped to supervise compliance with the IFR. This includes minor amendments to its powers to
  - make general directions,
  - enable the PSR to take action to correct compliance failures,
  - act on compliance failures and complaints,
  - conduct investigations and make requests for information, and
  - raise fees and statutory immunity;
- penalties regime. The government's proposal is that a penalties regime based closely on the existing regime under the Financial Services Banking Reform Act 2013 would be appropriate. Some modifications and additions will need to be made to ensure that the PSR is fully equipped with the necessary powers to apply penalties to enforce compliance with the IFR;
- assign a role to the FCA. The government intends to assign a role to the FCA where certain provisions of the IFR overlap with the FCA's existing remit, specifically where it crosses over with the FCA's role as supervisor under the UK Payment Services Regulations 2009, SI 2009/209. This applies to the following articles of the IFR: 8(2), 8(5), 8(6), 9(1), 9(2), 10(1), 10(5), 11(1), 11(2), 12(1) and 12(2). This will prevent unnecessary additional costs being incurred by the PSR, given that it would need to equip itself for a role already conducted by the FCA;
- assign a role to Trading Standards. The government intends to assign a role to the relevant Trading Standard bodies for a provision which falls under the Honour All Card Rule under art 10 of the IFR. This provision obliges merchants to display clearly to their customers which cards they accept, be it in a shop or online. The PSR or the FCA are not best placed to monitor compliance with this obligation as they do not have existing channels through which they interact with these types of businesses. The supervision of compliance of this kind is closer to the enforcement activity currently undertaken by Local Authority Trading Standards bodies. The government envisages that oversight of this provision will be monitored through complaints made to local

Trading Standards offices; this will ensure that there is sufficient yet proportionate regulatory oversight. Any disciplinary action will be taken in conjunction with the PSR;

- an appellate body is required to hear appeals against decisions taken by regulators in relation to the IFR. The government intends to assign a role to the Competition Appeals Tribunal ('CAT') to hear appeals against penalties imposed and other decisions made by the PSR. The CAT is already the appellate body for some of the PSR's activity. The type of appeal expected to be in relation to the IFR would be very similar to those already made to the CAT and will be dealt with in a similar way;
- out-of-court-redress procedures. The government intends to provide powers to the PSR to establish an out-of-court redress procedure allowing it to adjudicate on business-to-business disputes beyond its enforcement role for breaches of the IFR, including powers to order redress to be paid, for example, where resolution cannot be agreed.

HM Treasury 27.07.15

Consultation: proposal to use a Legislative Reform Order to change partnership legislation on collective investment schemes

This consultation sets out proposed amendments to the Limited Partnership Act 1907 which are intended to ensure that the UK limited partnership remains the market standard structure for European private equity and venture capital funds as well as many other types of private fund in an increasingly competitive global market.

As part of the Investment Management Strategy, at Budget 2013, the government announced that it would consult on changes to UK limited partnership legislation to more effectively accommodate the use of limited partnerships for private equity and venture capital investments.

The proposed amendments will apply to a UK limited partnership that is both (a) a 'collective investment scheme' (as defined in the Financial Services and Markets Act 2000, s 235, ignoring any exemptions) and (b) a relation which subsists under a written partnership agreement.

The amendments cover:

- registration issues and on-going filing and notification requirements;
- the role, function and rights of limited partners; and
- obligations of, and restrictions on, limited partners in respect of capital.

HM Treasury would welcome responses to the questions listed in the consultation, and any further information believed to be relevant. The consultation closes on Monday 5 October 2015.

HM Treasury 23.07.15

Government acts to support depositors during change to a new Financial Services Compensation Scheme coverage level

The government has introduced legislation (on 3 July 2015) which will ensure that retail customers and small businesses will continue to receive deposit protection of up to £85,000 until 31 December 2015, after which a new deposit protection limit of £75,000 will come into effect.

The Prudential Regulation Authority ('PRA') announced changes to its rules to implement the new level of deposit protection, which is provided by the Financial Services Compensation Scheme ('FSCS').

The change is being made in line with the Deposit Guarantee Schemes Directive, which sets the FSCS coverage level at the sterling equivalent of €100,000.

The FSCS deposit protection limit was set at £85,000 in 2010, which at the time was equivalent to €100,000. Due to the increased strength of the UK economy, the value of the pound sterling has increased, and it is necessary to reduce the limit.

Before the change comes into effect, firms will write to their customers to inform them about the changes to the deposit protection limit. Over 95% of retail depositors will continue to be fully protected by the FSCS's new deposit protection limit of £75,000 following 31 December 2015. The PRA is required to review the deposit protection limit every five years, and will manage any future changes in a way that seeks to minimise disruption for depositors.

The FSCS deposit protection limit currently covers any losses retail customers and small businesses suffer as a result of their bank, building society or credit union failing, up to a maximum of £85,000, per depositor, per authorised firm.

HM Treasury 03.07.15

Bank of England and PRA News

Strengthening the alignment of risk and reward: new remuneration rules

The PRA and FCA have announced new rules on remuneration. The PRA and the FCA are (on 23 June 2015) publishing new remuneration rules which include changes to deferral and clawback of variable remuneration (eg bonuses). The new framework aims to further align risk and individual reward in the banking sector, to discourage irresponsible risk-taking and short-termism and to encourage more effective risk management. The new rules apply to banks, building societies and PRA-designated investment firms, including UK branches of non-EEA headquartered firms.

Andrew Bailey, Deputy Governor for Prudential Regulation, Bank of England and CEO of the PRA said:

> 'Effective financial regulation involves creating appropriate incentives to encourage individuals to take greater responsibility for their actions. Our intention is that people in positions of responsibility are rewarded for behaviour which fosters a culture of effective risk management and thus promotes the safety and soundness of individual institutions.'

Martin Wheatley, CEO of the FCA, commented:

> 'Today's rules are part of a wider package that is being announced over the summer to embed an accountable culture in the City. Our rules will now mean that senior managers face clawback of bonuses for up to 10 years, if misconduct comes to light. This is a crucial step to rebuild public trust in financial services, and allows firms and regulators to build long term decision making and effective risk management into people's pay packets.'

The primary changes are:

- extending deferral (the period during which variable remuneration is withheld following the end of the accrual period) to seven years for Senior Managers, five years for risk managers with senior, managerial or supervisory roles at PRA-regulated firms and three to five years for all other staff whose actions could have a material impact on a firm (material risk takers);
- the FCA is introducing clawback rules (where staff members return part or all of variable remuneration that has already been paid) for periods of seven years from award of variable remuneration for all material risk takers, which were already applied by the PRA. Both the PRA and the FCA clawback rules will be strengthened by a requirement for a possible three additional years for Senior Managers (ten years in total) at the end of the seven-year period where a firm or regulatory authorities have commenced inquiries into potential material failures;
- prohibiting variable pay for Non-Executive Directors;
- making explicit that no variable pay including all discretionary payments should be paid to the management of a firm in receipt of taxpayer support; and
- strengthening the PRA requirements on dual-regulated firms to apply more effective risk adjustment to variable remuneration.

The clawback and deferral rules will apply to variable remuneration awarded for performance periods beginning on or after 1 January 2016, while other requirements will apply from 1 July 2015. Last year's consultation paper sought views on a number of options for addressing the issue of buy-outs, in which a firm compensates a new employee for any unpaid remuneration that is cancelled when they leave their previous firm (meaning that the employee can sometimes avoid malus reductions by changing firms). Following responses to the consultation paper, the PRA and the FCA will now explore further the option of requiring buy-out awards to be held in a form that permits them to be subject to malus by the previous employer. The FCA is also issuing new General Guidance on ex-post risk adjustment. This is the adjustment of variable remuneration to take account of a specific risk or adverse performance. The guidance is intended to share the latest good practice observed in the 2014 remuneration round and clarify the FCA's expectations on how relevant firms should meet the Remuneration Code requirements on ex-post risk adjustment. When the new European Banking Authority remuneration guidelines are published, the PRA and FCA may need to consult on any consequential rule changes which may be required.

PRA 23.06.2015

Fair and Effective Markets Review releases Final Report

The Fair and Effective Markets Review published its Final Report, which sets out 21 recommendations to help restore trust in the wholesale Fixed Income, Currency and Commodity ('FICC') markets. The Review was established by the Chancellor of the Exchequer and Governor of the Bank of England in June 2014 to help to restore trust in those markets in the wake of a number of recent high profile abuses.

FICC markets are critical to the operation of the global economy, impacting prices for anything from basic household necessities to the rates of interest at which firms can borrow. So it is vital that they work well, and in the best interests of everybody.

However, the scale of misconduct seen in recent years has both damaged public trust and impaired the effectiveness of these important markets. The lack of firm governance and controls, acceptable standards of market practice and a culture of impunity all contributed to a process of 'ethical drift', leading to huge fines, reputational damage, diversion of management resources and the reining in of productive risk taking. The Review's recommendations are aimed at restoring trust and fairness in FICC markets, while also boosting their overall effectiveness.

The Review is centred on four principles. First, individuals must be held to account for their own conduct; second, firms must take greater collective responsibility for market practices; third, regulators should close gaps in regulatory coverage and broaden the regime holding senior management to account; and fourth, given the global nature of these markets, coordinated international action should be taken wherever possible to improve fairness and effectiveness.

It is now time for individuals and firms to step forward and play a central role in improving standards in FICC markets. The Review has been greatly encouraged by firms' commitment to the project over the past year, most notably through the Market Practitioner Panel chaired by Elizabeth Corley, CEO of Allianz Global Investors. The challenge now is to turn that into action. If firms and their staff fail to take this opportunity, more restrictive regulation is inevitable.

A full list of the Review's recommendations is set out on pages 7–8 of the Final Report.

Recommendations to raise standards, professionalism and accountability of individuals include:

(i) encouraging the International Organization of Securities Commissions ('IOSCO') to consider developing a set of common standards for trading practices that will apply across all FICC markets;

(ii) extending UK criminal sanctions for market abuse to a wider range of FICC instruments and lengthening the maximum sentence from seven to ten years' imprisonment;

(iii) mandating qualification standards to improve professionalism and disclosure requirements for references to avoid misconduct going undetected when individuals change jobs.

Recommendations to firms to improve the quality, clarity and understanding of FICC trading practices:

(iv) creating a new FICC Market Standards Board with participation from a broad cross-section of firms and end users and, involving regular dialogue with the public authorities, to address areas of uncertainty in trading practices and promote adherence to standards.

Recommendations to the UK authorities to strengthen regulation of FICC markets include:

(v) extending elements of the Senior Managers and Certification Regimes to a wider range of regulated firms active in FICC markets;

(vi) creating a new statutory civil and criminal market abuse regime for spot foreign exchange, drawing on the international work on a global code.

Recommendations to the international authorities to raise standards in global FICC markets include:

(vii) agreeing a single global FX code providing a comprehensive set of principles to govern trading practices around market integrity, information handling, treatment of counterparties and standards for venue – as well as stronger mechanisms to ensure market participants adhere to that code;

(viii) examining ways to improve the alignment between remuneration and conduct risk at a global level.

In addition, the Review identifies a set of principles to guide a more forward-looking approach to the structure, behaviour and supervision of FICC markets. These will be an important theme at the Open Forum to be held at the Bank of England in the autumn of 2015.

Bank of England 10.06.15

Bank of England announces new appointments to the PRA Board

The Bank of England announced (on 27 July 2015) two new appointments to the Board of the PRA. The Court of Directors of the Bank, with the approval of the Chancellor of the Exchequer, has appointed David Thorburn and Dr Norval Bryson as independent members of the Board, effective 1 September 2015.

Mark Carney, Governor of the Bank and Chair of the PRA Board said:

> 'I am delighted to welcome David Thorburn and Dr Norval Bryson to the PRA Board. Each brings extensive insight and experience to the PRA Board. David's considerable expertise in retail and commercial banking will be of great benefit as will Norval's exposure to the insurance sector and extensive experience as a non-executive director. On behalf of the entire Board, I welcome David and Norval, and look forward to working closely with them.'

Bank of England 27.07.15

New approach to setting Pillar 2 capital requirements for the banking sector

In January, the PRA published a consultation paper that contained proposals on its Pillar 2 policy. The purpose of the proposals was to enhance the transparency and accountability of the PRA's approach to setting Pillar 2 capital requirements while at the same time ensuring that the approach is applied in a consistent and proportionate way across the population of relevant firms. By seeking consistency and proportionality across firms, the PRA proposals sought also to facilitate effective competition between firms, in line with the PRA's secondary objective.

The PRA published (on 29 July 2015) its feedback statement, supervisory statements and statement of policy alongside its reporting instrument. The changes that have been made in response to the feedback seek to enhance proportionality further, for example by clarifying the role of supervisory judgement, own capital assessments and the published supervisory methodologies in dealing with specific business models.

Background

Pillar 2 is an important part of ensuring firms hold adequate capital to support the relevant risks in their business. It is also intended to encourage firms to develop and use enhanced risk management techniques in monitoring and managing their risks.

There are two main areas that the PRA considers when conducting a Pillar 2 review: (i) risks to the firm which are either not captured, or not fully captured, under the capital requirements, referred to as Pillar 2A; and (ii) risks to which the firm may become exposed over a forward-looking planning horizon (e g due to changes in the economic environment), referred to as Pillar 2B.

The introduction of the Capital Requirements Directive ('CRD') IV and the publication by the European Banking Authority ('EBA') of guidelines for the Supervisory Review and Evaluation Process ('EBA SREP guidelines') has prompted the PRA to review its Pillar 2 framework.

The PRA is also taking this opportunity to re-align its Pillar 2 framework with its supervisory approach document and improve its own Pillar 2A capital methodologies so they are more risk sensitive and can be applied more consistently.

Andrew Bailey, Deputy Governor, Prudential Regulation, Bank of England and CEO of the PRA, said:

> ‘Firms must hold adequate capital to support the risks in their business, ensuring financial stability and continuity in the provision of key services to the wider economy. Pillar 2 capital requirements play an important role in ensuring firms have adequate capital and are a valuable tool for implementing the PRA’s forward looking judgement based supervisory approach. In delivering this approach the PRA is committed to being a clear, open and transparent regulator and today’s publication demonstrates this commitment.’

Summary of proposals

- The methodology used by the PRA to inform the setting of firms’ Pillar 2A capital are being refined so as to be more transparent and risk sensitive.
- The capital planning buffer will be replaced with a ‘PRA buffer’ which will harmonise the PRA’s approach with that of CRD IV. The PRA buffer will be held by firms to absorb losses that may arise under a severe, but plausible stress, in line with the CRD IV rules.
- Where the PRA assesses a firm’s risk management and governance to be significantly weak it may also set the PRA buffer to cover the risk posed by those weaknesses until they are addressed.
- Under the new Pillar 2 framework, firms will need to submit the data necessary for the PRA to run the new Pillar 2 methodologies with their ICAAP submissions.

Bank of England 29.07.15

FCA News

FCA finalises rules on complaints and call charges

Under the new rules, financial services firms will have longer to resolve complaints less formally. This is intended to allow firms to resolve more complaints first time rather than try to meet the current one day target. Firms will now have three days to address a complaint to a consumer’s satisfaction.

The increased time will allow for better and easier resolution for a greater number of complaints, benefiting both consumers and firms. The FCA also expects this change to result in fewer consumers having to take their complaints further.

If a complaint is resolved during this three-day period, firms will be required to send their customers a simpler, template message. This will inform the complainant of their right to take their complaint to the Financial Ombudsman Service.

Consumers will also have access to more data on complaints made to financial services companies. Firms will be required to report all complaints to the FCA, which will publish the data and provide additional context to allow consumers to better compare firms. Currently, firms are only required to report complaints to the FCA that take longer than a day to resolve.

From September 2016 the FCA's biannual complaint data release will change. This new, fuller data set will not be comparable to historic data published by the FCA. However, the FCA believes that the new biannual complaint data publication will be more informative for consumers and industry, and will provide better intelligence to the regulator.

FCA 23.07.15

FCA publishes final guidance on concurrent competition powers

The FCA has published the final guidance on its concurrent competition powers together with a policy statement setting out its responses to feedback received during the consultation earlier this year.

The new powers came into force on 1 April 2015 and give the FCA the ability to enforce against infringements of competition law, additional powers to conduct market studies and powers to refer markets to the Competition and Markets Authority ('CMA') for in-depth investigation with regard to financial services. The CMA can also exercise these powers.

Christopher Woolard, director of strategy and competition at the FCA, said:

> 'The FCA's concurrent powers are an important part of our toolkit. They benefit all consumers of financial services by encouraging competition amongst firms and deterring and punishing any anti-competitive behaviour.'

The concurrent powers also support the FCA's engagement at a European level to address any potential cross-border competition issues.

The FCA has made amendments to its FCA Handbook that reinforce the obligation on authorised firms to disclose actual or potential competition law infringements to the FCA.

In January 2015, the FCA announced a consultation on guidance and FCA Handbook amendments to enable it to use its competition and concurrency powers effectively and efficiently. The policy statement sets out amendments made to the guidance and Handbook amendments in response to comments received during the consultation.

The FCA handbook amendments take effect from 1 August 2015 and the guidance will be regularly reviewed and updated if necessary.

FCA 15.07.15

FCA publishes new referral criteria for enforcement investigations

The FCA has updated the criteria and outlined the process it uses when deciding whether to refer a firm or individual to its enforcement division for a formal investigation.

Where misconduct is proved, an enforcement investigation can lead to fines, bans and suspensions. But enforcement is only one of a range of tools available to the FCA. The process published (on 10 July 2015) will clarify how the FCA decides which regulatory tool is the most likely to fulfil its objectives in each individual case.

Georgina Philippou, acting director of enforcement and market oversight at the FCA, said:

> 'Enforcement is not the only tool at our disposal where we see misconduct by firms or individuals, nor is it the most appropriate one to use in every case. Today's publication will make our decision making process more transparent. Firms and the public will now have a clearer understanding of the questions we ask ourselves before we start a formal investigation.'

When deciding whether to investigate, the FCA considers the following three overarching questions:

(1) Is an enforcement investigation likely to further the FCA's aims and statutory objectives?

(2) What is the strength of the evidence and is an enforcement investigation likely to be proportionate?

(3) What purpose or goal would be served if the FCA were to take enforcement action in this case?

In December 2014, HM Treasury published a review of the enforcement decision making process at the FCA and the PRA. As a result of that review, the FCA committed to publishing updated referral criteria and to set out more clearly the process by which decisions to refer cases to enforcement are taken.

The FCA will publish a consultation paper later this year setting out how it plans to implement other recommendations made in the review.

In addition to publishing the referral criteria for enforcement investigations, the FCA has also today set out more detail about how it decides on which regulatory response is best suited to a case. This involves assessing whether a referral for an enforcement investigation is appropriate before a final decision is made by relevant senior staff.

The FCA has also made clear that by opening an investigation, it does not mean it has decided that a breach has been committed. Nor does it mean that it has decided what type of enforcement action to take, if any, should it turn out that there has been a breach.

FCA 10.07.15

FCA consultation papers

Consultation paper 15/23: Ring-fencing: Disclosures to consumers by non-ring-fenced bodies

As part of the ring-fencing regime the FCA is required by law to make rules specifying the information that a non-ring-fenced body ('NRFB') must provide to individuals with financial assets of at least £250,000 that are account holders or that have applied to open an account, including joint accounts, with an NRFB.

The FCA proposes that NRFBs will be required to give the relevant consumers descriptions of the investment and commodities trading activities that they carry out, and details of any 'prohibited action' taken. The rules that the FCA is proposing do not go significantly beyond what is explicitly required by the ring-fencing legislation. The area in which the rules go furthest beyond what is required by the legislation is the timing of when the information is to be provided. The FCA anticipates that in most cases firms will provide the information before they become NRFBs. It also must be provided when an individual applies to open an account with an NRFB, after the regime is in force. They will also need to supply some explanatory information to help consumers to understand the implications of banking with a non-ring-fenced entity in the group. This would inform any decision to place a deposit with an NRFB. Finally, NRFBs will need to display the information on their website and keep it up to date.

The FCA does not propose to impose any corresponding disclosure requirements on banks that are not subject to the ring-fencing regime.

Comments should be sent by 13 November 2015.

FCA 14.07.15

Consultation paper 15/22: Strengthening accountability in banking: Final rules (including feedback on CP14/31 and CP15/5) and consultation on extending the Certification Regime to wholesale market activities

In this paper the FCA sets out final rules for a new accountability framework for individuals working in banks, building societies and credit unions. As well as making sure that, in future, senior managers can be held accountable for any misconduct that falls within their area of responsibility, the FCA's regime aims to hold individuals working at all levels in banks and other relevant firms to appropriate standards of conduct. In March, the FCA provided feedback in Consultation Paper 15/9: *Strengthening accountability in banking: a new regulatory framework for individuals* ('CP15/9') on the responses it had received to its consultation and it set out near-final rules for its Senior Managers Regime ('SMR'). Following publication of its paper, the PRA also issued a Policy Statement containing some of its final rules on accountability. The FCA and the PRA are now able to provide final rules for the new regime as a whole, in this paper and the PRA's Policy Statement PS16/154, which is being published at the same time. In designing its new accountability regime, the FCA has sought to understand and respond to feedback. As a result, as well as making its final rules the FCA is also consulting afresh on the extension of the Certification Regime to individuals involved in wholesale market activities, such as trading. The FCA explained its initial thinking in this area in March, in CP15/9, and now ready to consult on the rules and guidance needed to deliver the change.

In publishing its final rules, the FCA is providing a further piece of information needed by firms as they make progress towards the new regime. Preparations will be needed for the different elements of the regime, in particular:

- The Senior Managers Regime focuses on individuals who hold key roles or have overall responsibility for whole areas of relevant firms. Preparations for the new regime will involve allocating and mapping out responsibilities and preparing Statements of Responsibilities for individuals carrying out Senior Management Functions ('SMFs'). While individuals who fall under this regime will be approved by regulators, firms will also be legally required to ensure that they have procedures in place to assess their fitness and propriety before applying for approval and at least annually afterwards.
- The Certification Regime applies to other staff who could pose a risk of significant harm to the firm or any of its customers (for example, staff who give investment advice or administer benchmarks). Firms' preparations will need to include putting in place procedures for assessing for themselves the fitness and propriety of staff, for which they will be accountable to the regulators. These preparations will be important not only when recruiting for roles that come under the Certification Regime but when reassessing each year the fitness and propriety of staff who are subject to the regime.
- The Conduct Rules are high-level requirements that hold individuals to account. Firms' preparations will need to include ensuring that staff who will be subject to the new rules are aware of the conduct rules and how they apply to them. Individuals subject to either the SMR or the Certification Regime will be subject to Conduct Rules from the commencement of the new regime on 7 March 2016, while firms will have a year after this, until 7 March 2017, to prepare for the wider application of the Conduct Rules to other staff.

FCA 07.07.15

FCA bans and fines

Lee Stewart

The FCA banned Lee Stewart, a former trader at Coöperatieve Centrale Raiffeisen-Boerenleenbank BA ('Rabobank') from the UK financial services industry for lacking honesty and integrity following a criminal conviction for fraud in the US. In March 2015 Mr Stewart pleaded guilty in the US for his role in a conspiracy to manipulate Rabobank's US Dollar LIBOR submissions.

30.07.15

Kevin Allen

The FCA banned Kevin Allen from performing any function related to any regulated activity.

Mr Allen was sole shareholder of NMB, a mortgage intermediary, while holding controlled functions at another firm offering equity release mortgage products, New Life. Between 2009 and 2013, Mr Allen made illegitimate transfers totalling £1,000,000 from New Life to NMB without the knowledge of the other New Life directors.

Mr Allen also fabricated an exchange of emails between himself and another director claiming to authorise one of the transactions and falsified a bank statement in order to mislead New Life's auditors.

09.06.15

Lloyds Bank Plc, Bank of Scotland Plc and Black Horse Ltd

The FCA has issued its largest ever retail fine (£117m) to Lloyds Bank Plc, Bank of Scotland Plc and Black Horse Ltd (together 'Lloyds') for failing to treat their customers fairly when handling Payment Protection Insurance ('PPI') complaints between March 2012 and May 2013.

During the relevant period Lloyds assessed customer complaints relating to more than 2.3m PPI policies and rejected 37% of those complaints.

05.06.15

EU AND INTERNATIONAL

Commission Launches Public Consultation on Corporate Tax Transparency

The European Commission launched (on 17 June 2015) a public consultation on corporate tax transparency in the EU. This consultation aims to find out whether requiring companies to disclose more information about the taxes they pay could help tackle tax avoidance and aggressive tax practices in the EU. For instance, companies could be required to disclose the taxes they pay, in every country where they operate.

The fight against corporate tax avoidance is a top priority of this Commission. The consultation is part of the broader Action Plan for Fair and Efficient Corporate Taxation that is also being presented. The Commission's work follows through on the commitments made by G20 leaders, who have pledged to ensure that tax authorities freely exchange information about large multinationals, including their country-by-country reporting ('CBCR').

Some companies currently generate large profits in the Single Market, but pay little or no tax in the EU. Some multinationals are able to use aggressive tax planning, national mismatches and legal loopholes due to their presence in multiple jurisdictions. Their use of complex corporate structures often puts small and medium enterprises ('SMEs') at a disadvantage. It may also distort competition, put smaller rivals at a disadvantage and pit EU and non-EU companies within the Single Market against each other.

Transparency requirements currently exist for banks under the CRD IV (IP/14/1229) and for large extractive and logging industries under the Accounting Directive (IP/11/1238, MEMO/13/540), in the form of country-by-country reporting. This consultation aims to assess whether extending such public disclosure obligations to multinationals in other sectors could help address tax avoidance.

Requiring a company to disclose more information about its tax affairs – either to tax authorities or to the public through its annual reports – would help shine a light on harmful tax practices. Increased transparency is also likely to incentivise companies to pay their fair share of tax in the country where profits are made. Moreover, greater transparency might encourage member states to take measures that contribute to more efficient and fairer tax competition. On the other hand, greater transparency requirements without sufficient safeguards may run the risk of sensitive business information being publicised. This could be detrimental to companies, especially if their competitors outside the EU are not following suit. All these factors and others would need to be carefully weighed up when considering whether next steps might be necessary.

European Commission 17.06.15

Roadmap for the Future of the Economic and Monetary Union

The presidents of five European institutions publish a report entitled 'Completing Europe's Economic and Monetary Union', commissioned by leaders at the Euro Summit last October. The report, written by the presidents of the European Council, the European Commission, the European Parliament, the Eurogroup and the European Central Bank, lays out a roadmap for further integration of the euro area.

It will be presented to political leaders assembled in the European Council.

'The report describes how we can move from the current system of coordination by rules to joint decision-making within common institutions,' ECB President, Mario Draghi, said. 'We need a quantum leap in European integration. We need to address the fragilities of our economies; to ensure that divergence will become convergence again; and to safeguard the irreversibility of monetary union. Our report provides the roadmap for this.'

The report outlines ways to reinforce the foundation of the euro area in two phases. In the coming months, it suggests a process of 'integration by doing' to make euro area economies more resilient and to shore up the euro area as a whole, in particular by completing banking union. The presidents advocate a swift agreement on a permanent common backstop for the Single Resolution Fund. They call for steps towards creating a European Deposit Insurance Scheme as a priority.

The report also calls for the start of a new convergence process for all euro area member states to achieve higher levels of resilience against shocks. The five presidents note that this convergence process will need to involve further sharing of sovereignty over key policies. This would mean moving to joint decision making in common institutions in these areas. At the end of this convergence process, the presidents propose setting up a fiscal stabilisation function for the euro area to insure each other more efficiently against shocks while avoiding permanent transfers between member states. They also advocate eventually establishing a euro area treasury to jointly take decisions about certain elements of national budgets.

In spring 2017, the European Commission will make specific proposals on how to pool sovereignty further. The presidents will be closely involved in the development of these proposals. The report calls on the European Council to endorse the proposals made as soon as possible.

ECB 22.06.2015

Final Criteria for Identifying 'Simple, Transparent and Comparable' Securitisations issued by the Basel Committee and IOSCO

The Basel Committee on Banking Supervision and the IOSCO today released final *Criteria for identifying simple transparent and comparable securitisations*. The criteria are available on the websites of the Bank for International Settlements and IOSCO.

The purpose of these criteria is to assist in the financial industry's development of simple, transparent and comparable securitisation structures. They are not intended to serve as a substitute for investors' due diligence.

In December 2014, the Basel Committee and IOSCO published for consultation these 14 criteria to identify certain features of simple, transparent and comparable securitisations. Overall, respondents welcomed the initiative, and broadly agreed that the proposed criteria might further assist investors in their investment decision-making process.

The Basel Committee and IOSCO have amended certain aspects of the proposed criteria that were considered overly prescriptive, and have clarified other issues where respondents raised doubts about their interpretation or implementation.

These criteria apply only to term securitisations and are non-exhaustive and non-binding. Additional and/or more detailed criteria may be necessary based on specific needs and applications.

Criteria promoting **simplicity** refer to the homogeneity of underlying assets with simple characteristics, and a transaction structure that is not overly complex.

Criteria on **transparency** provide investors with sufficient information on the underlying assets, the structure of the transaction and the parties involved in the transaction, thereby promoting a more thorough understanding of the risks involved. The form in which the information is available should not hinder transparency, but instead it should support investors in their assessment.

Criteria promoting **comparability** could assist investors in their understanding of such investments and enable more straightforward comparison between securitisation products within an asset class.

Although the criteria are not, of themselves, a prescription for regulatory action, the Basel Committee is exploring how these criteria could be incorporated into the securitisation framework revised in December 2014.

Mr Greg Medcraft, Chairman of the IOSCO Board and of the Australian Securities and Investments Commission, said:

> ‘Since the onset of the financial crisis, securitisations have continued to be perceived as too complex, and insufficient information has been available to investors to enable them to perform their risk assessments. These criteria aim to help address some of these issues.’

The Basel Committee and IOSCO wish to thank all those who contributed time and effort to express their views during the consultation process.

BIS 23.07.15

Correspondence about this Bulletin may be sent to Sarah Hanson in Editorial, LexisNexis, Lexis House, 30 Farringdon Street, London EC4A 4HH, (tel 020 7400 2500).

Subscription enquiries should be directed to LexisNexis Customer Support Department, (tel (0)84 5370 1234).

Published by LexisNexis

ISBN 978-1-4057-9279-0
9 781405 792790