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Financial Services: Regulatory Risk Trends

January 2025

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Happy New Year and welcome…

… to this quarter's **'Financial Services: Regulatory Risk Trends'** – Pinsent Masons' update on some of the 'hot topics' our financial services lawyers think you should know about.

This edition is the first of 2025 with a busy year ahead, as the Government and regulators seek to balance the urgent need for economic growth and competitiveness with sufficiently rigorous regulation which protects consumers and the integrity of the UK's financial system.

The FCA's recent identification of its upcoming 5-year strategy highlights key themes that look to strike that balance, especially when it comes to resilience – a key area of focus in this quarter's edition – in relation to both consumers and firm and business operations.

On the consumer resilience side, the Government's recent "Call for Input", proposing closer collaboration between the FCA and FOS, is particularly significant at a time of increasing mass redress events such as undisclosed motor finance commissions, where the courts have also been busy of late. Consumer resilience also features in further developments with respect to FCA next steps on the advice/guidance boundary and targeted support, all against backdrop of increasing customer complaints to FOS and further embedding of the Consumer Duty.

In terms of operational resilience, there have also been significant developments with respect to the regulation of 'critical third parties' which impose further regulatory requirements and may also likely have implications for the contracts that such third parties enter into with financial institutions.

More broadly, 2025 will see further sector-specific interventions with respect to the motor insurance market, including a competition market study and a motor insurance taskforce. Capital markets will also see some interesting innovations with the advent of PISCES, a new trading platform.

We can look forward to a year of closer collaboration and innovation which promises to generate some wide-reaching guidance and regulation. Hopefully, this will help rather than hinder economic growth.

This edition has been accompanied by our fourth "Regulatory Risk Trends Conversations" webinar where key contributors have shared additional insights and analysis on the topics in this publication. We hope this publication is useful to you, your stakeholders and your businesses, and we look forward to providing you with our views and insights on these matters as they develop further over time, together with any new developments.

Best wishes,

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FCA STRATEGY UPDATE

In a nutshell…

The FCA is developing a new 5-year strategy focused on 4 key themes: becoming a more efficient and effective regulator; tackling financial crime; building consumer resilience; and supporting economic growth and innovation. The strategy has been shaped by inputs from FCA employees, firms, trade bodies, consumer organisations, and politicians.

Further detail…

- **Efficiency and effectiveness**: the FCA aims to increase value for money and reduce regulatory costs where possible. It plans to streamline data requests, as well as being more predictable, pragmatic, and proportionate in its operations. The regulator is rethinking its supervisory approach, and leveraging technology and data for automation. It is also looking to improve service metrics and enforcement investigation timelines.
- **Financial crime:** the FCA intends to strengthen its ability to tackle financial crime, including fraud and money laundering, which harms consumers, businesses, and undermines trust in the financial system. To do this, the regulator will focus on partnerships, working with UK and overseas agencies, and explore digital solutions like identity passports to reduce compliance costs while maintaining high standards.
- **Consumer resilience:** the FCA aims to ensure consumers have access to and confidence in appropriate financial products and services to support their financial wellbeing throughout their lives. The regulator will work on clarifying the distinction between advice and guidance, and explore ways to increase value in areas like pensions and investments.
- **Promoting economic growth:** the FCA plans to reduce regulatory costs, support innovation through initiatives like the Regulatory Sandbox and AI Lab, facilitate investment in the real economy, and promote sustainable finance. The regulator acknowledges the need for an appropriate risk appetite to enable growth while maintaining trust.

Key takeaways…

The new 5-year strategy offers few surprises given the FCA has telegraphed many of these themes for some time. While the strategy looks to be a consolidation of several key areas of focus - particularly technological innovation and fighting financial crime - the strategy appears to place greater emphasis on economic growth. This shift in approach may offer some reassurance that the regulator will not come down as hard on those firms seeking to innovate and take appropriate risks in good faith.

MODERNISING THE REDRESS SYSTEM

In a nutshell…

The FCA and FOS have recently published a joint Call for Input, seeking views on how to modernise the redress system so it better serves consumers and provides greater stability for firms to invest and innovate.

Further detail…

The Government has been working with the FCA and FOS on a new agreement between the regulators setting out clearer expectations on how they should cooperate, including on historic market practice and mass redress events. The key objectives for the Call for Input are:

- Consumers can receive appropriate redress efficiently when things have gone wrong.
- Firms can identify harm at an early stage, proactively address it and resolve complaints more effectively themselves. This will reduce the need for consumers to refer complaints to the FOS to get fair outcomes, and may also reduce case fees for firms.
- The FOS and FCA can identify redress events or issues with wider implications earlier so they can be resolved swiftly and efficiently. This may result in fewer events escalating into mass redress events, a reduced burden on the FOS and the Financial Services Compensation Scheme (FSCS), and a potential reduction in the long term of associated levies.
- Consumer and industry stakeholders should have more direct channels of communication with the FCA, the FOS and other regulatory partners involved in the Wider Implications Framework. This will make it easier for consumer and industry stakeholders to flag matters with potentially wider implications for a market.
- The FCA and FOS should improve how they work together to ensure views on regulatory requirements are consistent. This will provide a more predictable regulatory environment for firms, which helps to support investment and further the FCA's secondary objective on competitiveness.

Key takeaways…

The focus on closer cooperation between the FCA and FOS is to be welcomed at a time when mass redress events like motor finance commission disclosure complaints are having such major impacts on the financial services industry and wider market. The Call for Input will serve as a key inflection point for the FCA and FOS, looking at how best they can approach such events with greater certainty, consistency and clarity – factors on which markets and businesses place a particularly high premium. The Call for Input also puts financial services firms on notice, if they are not already with the advent of the Consumer Duty, that they too will be expected to act with greater efficiency and proactivity to address complaints when they arise.

Elizabeth Budd reviews the FCA's work on the advice/guidance boundary and information to be given to investors.

ADVICE GUIDANCE BOUNDARY

In a nutshell...

The FCA has set out next steps in its work on closing the advice gap, following feedback on its 2023 Policy Paper (DP23/5) on the Advice Guidance Boundary Review. The review included 3 proposals: targeted support (a new form of support allowing authorised firms to provide suggestions appropriate for consumers with similar characteristics); simplified advice (a new form of advice for firms to provide affordable personal recommendations to consumers with straightforward needs); and further clarifying the boundary (providing more certainty on when firns can provide support without regulated advice).

Further detail...

- **Feedback received**: most respondents agreed that the proposals were a positive step towards improving consumer outcomes. Concerns were raised about the risks of developing new forms of regulated help and ensuring consumers understand the support and protections provided. Targeted support received the most positive feedback as a way to help consumers at scale, but stakeholders emphasised the need for consumer confidence and understanding. Simplified advice was seen as having a role but may not meet mass market demands.
- **FCA approach**: the FCA's first consultation CP24/27: Advice Guidance Boundary Review – proposed targeted support reforms for pensions published before Christmas focuses on pensions support, setting out how targeted support could work for pension savers. During H1 2025, the FCA plans to develop proposals for targeted support in relation to wider investments and consult on draft rules in relation to consumer investments and pensions. The FCA is conducting research to understand barriers to retail investors receiving support, as well as how targeted support may help overcome them such barriers.
- **Working with firms**: the FCA will continue engaging with firms, statutory panels, industry groups, and trade bodies. Firms can contact the FCA and test propositions in digital sandboxes. The FCA will engage directly with small advice firms in 2025 through roundtables to gauge their willingness and capacity to offer simplified advice. The Government and the FCA will review options, including legislative change, to deliver a targeted support regime based on feedback.

Key takeaways...

2025 promises significant developments in helping to clarify the boundary between regulated advice and other forms of support. This is an area where further clarification is needed, noting recent FCA research which shows engagement by consumers with and understanding of pensions is low: only 9% of adults have taken full regulated advice in the last 12 months (Financial Lives Survey, 2024).

CONSULTATION ON INVESTOR INFORMATION

In a nutshell...

The FCA has set out plans in a recent consultation paper to simplify information supplied to investors.

Further detail...

Under the current EU-derived rules, such as the PRIIPS Regulation, people buying investments are supplied with standardised documents covering prescribed information.

The FCA is keen to move away from the rigidly templated format of the PRIIPs Key Information Document (KID) and the UCITS Key Investor Information Document produced by manufacturers, which do not allow firms to adapt communications as necessary to meet the information needs of retail investors. The FCA considers that current PRIIPs and UCITS disclosures do not effectively help decision-making, as they do not consistently engage consumers. This is partly due to the prescriptive format of the disclosure documents, which fail to capture attention at critical decision points. Consumers who are not engaged with information are more likely to be influenced by behavioural biases. Where consumers do engage, the PRIIPs KID can in some cases present inappropriate information due to the methodologies not working well across all situations.

The FCA has proposed replacing this with a simpler and flexible system which is tailored to the UK. Underpinning this new approach are the following principles:

- **Flexible, proportionate, and technology neutral**, to encourage firms to develop innovative and engaging ways of presenting product information to consumers.
- **Outcomes-focused and designed around the Consumer Duty**, so firms can focus on delivering good outcomes for their customers instead of meeting prescriptive rules.
- **Enable consumers to get the right information at the right time**, with distributors embedding product information into the consumer journey to support consumer understanding, and producing their own product summaries using manufacturer supplied core information.
- **Standardisation only where needed** so consumers can effectively compare the costs and charges, risk, and performance of different products.

Key takeaways...

While the FCA has previously made targeted amendments to the disclosure regimes, the current proposals are more comprehensive and seek to strike an important balance between helping consumers understand the products they are buying and giving firms flexibility to innovate. That is not always an easy balance to strike - particularly where the FCA's latest research shows 66% of 18-40 year-old investors spend less than 24 hours deciding on an investment. The consultation closes on 20 March 2025.

David Heffron examines a recent decision on motor finance commission, and FCA work in relation to cryptoassets.

MOTOR FINANCE COMMISSION UPDATE

In a nutshell...

On 17 December 2024, the High Court found in favour of the Financial Ombudsman Service in a review of the FOS' decision to uphold a complaint relating to a discretionary commission arrangement (DCA) in a motor finance agreement.

Further detail...

The High Court found that the FOS had interpreted FCA rules and the Consumer Credit Act 1974 correctly, and was entitled to find the dealer and the lender did not adequately disclose their commission arrangements to the borrower. Moreover, the Court found that the relationship between the lender and the borrower was unfair in those circumstances.

The FCA has been reviewing the use of DCAs in the motor finance market before its 2021 ban. The review is assessing whether there was widespread misconduct related to DCAs, if consumers lost out and, if so, the best way to make sure any compensation owed is received in an appropriate settlement. The FCA has also given firms more time to provide final responses to complaints about motor finance in both DCA and non-DCA cases while it carries out its review.

The High Court decision comes in the wake of the 'Johnson' case where the Supreme Court recently confirmed it will hear an appeal against the Court of Appeal's judgment in 3 other motor finance cases involving DCAs and non-DCAs. The appeal relates to the application of common law, equitable principles and the Consumer Credit Act, rather than FCA rules.

Key takeaways...

The High Court decision reiterates just how hard it is to judicially review the FOS. A challenger must show that the decision is unlawful by reason of some flaw such as error of law or irrationality, which is unlikely given the FOS' broad discretion to make findings of fact and determine remedies under the "fair and reasonable" jurisdiction.

Looking at the High Court and Court of Appeal decisions in the round, it appears that the courts are becoming more in tune with the approach of regulatory bodies. Given the Court of Appeal's judgment affects both DCA and non-DCA complaints, there remains a 'watch this space' aspect in terms of how motor finance commission cases will ultimately be resolved.

In particular, although the High Court declined to find that the FOS should refer a motor finance case to the court as a "test case" for the first time under DISP 3.4.2R, the FCA may take action on a more systematic basis. This might be in the form of an industry-wide redress scheme under s.404 FSMA, as was the case with Arch Cru and British Steel, or a complaints-led approach relying on the FOS, which the FCA took in relation to PPI.

REGULATION OF CRYPTOASSETS

In a nutshell...

The FCA has outlined further details regarding its proposed regulatory regime for cryptoassets in a new Discussion Paper, covering admission to trading, disclosures and market abuse. The Discussion Paper is the latest publication to follow from the FCA's cryptoasset regulation 'roadmap'.

Further detail...

Under the proposals, the FCA's regulatory powers for cryptoassets will expand to a more comprehensive conduct regime, covering cryptoasset trading, regulation of stablecoins, custody and other core activities. The FCA proposes to introduce a new regime for cryptoassets admissions and disclosures similar to the regime for the traditional securities market.

The FCA anticipates there will be a 'necessary information test' where document preparers could be held liable for consumer losses if they did not include necessary information material to a consumer making an informed assessment of the cryptoasset.

The regulator is also considering introducing more detailed requirements in the FCA Handbook, including requiring additional information to be disclosed on the nature and scope of governance mechanisms that may affect the cryptoasset. These requirements are designed to help firms provide sufficient detail to enable consumers to make an informed decision, while offering firms flexibility in determining the appropriate disclosures based on the specifics of the cryptoasset in question.

Key takeaways...

The FCA's proposals mark a key staging post in the regulation of cryptoassets, with the advent of a more robust regulatory framework on disclosure and liability. This comes at an important juncture, given the FCA's latest research suggests that 12% of UK adults now own cryptoassets, up from 10% in 2022. Awareness of cryptoassets also rose from 91% in 2022 to 93% in 2024.

Relevant firms and businesses will therefore need to ensure they are properly engaged and prepared for the proposed regime as and when it is introduced – not least because document preparers could face civil liability for untrue or misleading statements, or omissions of required information, if they are found to be negligent. However, certain types of forward-looking statements will be protected by adopting the 'recklessness' standard under the FSMA, which imposes a lower liability risk. This is to encourage preparers of admission documents to include helpful and relevant decision-useful information.

The deadline for comments on the Discussion Paper is 14 March 2025.

Iain Sawers looks at recent work by the FCA and Government in relation to insurance, and the FOS approach to ghost broking.

INSURANCE STUDY AND TASKFORCE

In a nutshell…

The FCA has announced a package of work in the insurance market amid concerns about rising prices, alongside the launch of the Government motor insurance taskforce.

Further detail…

- **Competition market study:** the FCA has launched a review to examine whether people who borrow to pay for motor and home insurance are receiving fair, competitive deals. Premium finance allows people to pay for insurance in instalments. With the average yearly rate on the amount of money borrowed ranging between 20 to 30%, the FCA is concerned that premium finance may not be providing fair value. As part of its market study, the FCA will review whether the products represent fair value, how well customers are made aware of their financing options, the role of commission, and other potential barriers to effective competition in the motor and home premium finance market.

- **Motor insurance taskforce:** the Government announced a taskforce towards the end of last year, including the FCA, with the aim of identifying any actions that may stabilise or reduce motor insurance premiums while maintaining appropriate levels of cover. The FCA will analyse the causes of increased costs in motor insurance and will look closely at claims costs, reviewing claims handling arrangements and factors impacting different types of claims. The regulator will also analyse the impact of rising insurance prices on different customer groups, such as younger and older drivers and those from ethnic minority backgrounds or on lower incomes.

Key takeaways…

The renewed regulatory focus in the fairness of the insurance sector builds on the FCA's earlier Dear CEO letter from September 2022, which highlighted similar issues of concern. These issues have taken on more heightened regulatory significance with the introduction of Consumer Duty, as well a recent focus on issues around commission. Set against that backdrop, it may not be surprising if the regulator pursues a more vigorous approach in the coming year, requiring firms to do more to demonstrate that customers are getting a fair deal.

The imperative to show fair value is particularly relevant in relation to customers in vulnerable circumstances. Last year's FCA Financial Lives Recontact Survey found that 11.8m adults, in the 12 months to January 2024, cancelled an insurance or protection policy, reduced their level of cover, and/or chose not to buy a policy, because of affordability concerns. Firms which cannot evidence how they ensure good outcomes for customers can expect supervisory intervention or even enforcement action.

EMERGENCE OF "GHOST BROKERS"

In a nutshell…

The Financial Ombudsman Service has highlighted a rise in so-called 'ghost brokers' which risks causing significant detriment to customers. It has also upheld complaints against insurance providers who have cancelled policies and added fraud markers on the insurance database in cases involving ghost brokers.

Further detail…

'Ghost brokers' act as insurance intermediaries – particularly for car and house insurance – offering policies that either do not exist or are invalid, leaving their victims without proper coverage and potentially facing serious consequences.

With an increasing number of young people using social media to search for car insurance deals, the risks of being tricked by fraudulent brokers are becoming more acute.

In cases investigated by FOS, many insureds do not realise they have been scammed by a ghost broker until they make a claim. The FOS has upheld cases against insurance providers in certain instances, including the following:

- A consumer purchased a policy using a ghost broker, leading to subsequent cancellation by the insurer who then added a fraud marker. The FOS found that the consumer was the victim of a ghost broker, and did not think it was fair for the insurer to add the marker without giving the consumer the option of cancelling the policy himself. As the insurer's action resulted in the consumer experiencing ongoing difficulties in getting new cover, the FOS ordered the insurer to reverse its decision to cancel the policy.

- The FOS took a similar position where a consumer complained after the insurer voided her motor policy on the basis of misrepresenting details to get a cheaper quote. The consumer had been the victim of a ghost broker, to whom they had provided correct information to set up the policy. This information was not passed on to the insurer, which is a common tactic used by ghost brokers. The FOS found it was unfair to hold the consumer responsible for the misrepresentation and ordered the insurer to put things right.

Key takeaways…

Given such cases are on the rise, the regulatory risk exposure for insurance providers who face FOS complaints may also increase. Whilst FOS complaints will turn on the particular circumstances of an individual complaint (the FOS has also rejected some ghost broker complaints), insurance providers will want to ensure that their systems and controls for handling such cases are sufficiently rigorous so as to mitigate risk of FOS complaint referrals where possible.

Yvonne Dunn considers the Digital Operational Resilience Act and the regulators' work on critical third parties.

CRITICAL THIRD PARTIES

In a nutshell...

The Bank of England, Prudential Regulation Authority, and Financial Conduct Authority have introduced new rules for 'critical third parties' (CTPs) in the financial sector. These rules, effective from 1 January 2025, will impose new regulatory requirements on CTPs. They are also likely to have implications for the contracts that CTPs enter into with financial institutions.

Further detail...

The new regime includes the following key factors:

- **Transparency requirements**: CTPs will be required to be transparent in their dealings with customers, engage in self-assessments, and provide resource mapping and supply chain analysis reports. Financial institutions may seek to obtain these reports from CTPs as part of their own reporting obligations.
- **Testing and Incident Management**: CTPs must periodically review, update, and test their business continuity, disaster recovery, and incident management procedures. Financial institutions may wish to obtain contractual rights to participate in these exercises and provide input on the resilience plans of the CTPs on which they rely.
- **Notification**: Financial institutions may include obligations in contracts for CTPs to notify them when their CTP status changes, when specific services are designated as critical, or when certain operational resilience events occur, such as changes to leadership or regulatory enforcement actions.
- **Regulatory compliance:** CTPs may place obligations on customers to ensure regulatory compliance, such as mutual rights to disclose confidential information to regulators. Financial institutions will need to assess these requirements to ensure they do not go beyond what is necessary for compliance.
- **Resource mapping:** CTPs must map resources used in providing critical services, which may include dependencies provided by customers.
- **Standardisation:** CTPs may try to introduce increased standardisation in their contracts, such as in relation to management information reporting, to reduce the regulatory burden.
- **Impact on small providers**: non-CTP providers may voluntarily enhance their offerings in line with CTP requirements to remain competitive in the market, which will be welcomed by financial institution customers.

Key takeaways...

While CTPs can enhance the financial sector with innovative offerings, disruption or failure to one of them — such as a cyber-attack or power outage — could affect a large number of consumers and firms which may, in turn, threaten the stability of the financial system. It is not surprising therefore that the Government and regulators are keen to mitigate this risk as far as possible by looking to strengthen the resilience of the services that critical third parties provide to individual firms, as well as the resilience of the UK financial services sector as a whole.

DIGITAL OPERATIONAL RESILIENCE ACT

In a nutshell...

The Digital Operational Resilience Act (DORA) is due to take effect this month, introducing more detailed obligations in respect of operational resilience for financial services businesses and providers of ICT services.

Further detail...

DORA is a European regulation that sets out requirements for digital operational resilience in relation to ICT services. It will apply to FS businesses (including banks, building societies, insurers and recognised investment exchanges) and ICT third-party service providers..

DORA requires firms to establish and maintain a comprehensive digital operational resilience framework. This will include:

- Taking responsibility at Board level for managing ICT risk
- Having strategies, policies, procedures and tools to minimise the impact of risk
- Reporting major ICT-related incidents and significant cyber threats to regulators
- Conducting digital operational resilience testing
- Sharing information and intelligence about cyber threats and vulnerabilities
- Providing information on ICT risk to regulators if requested.

Key takeaways...

DORA will likely overlap with existing frameworks that apply to some firms. For example, there is overlap with the UK operational resilience rules set by the PRA and FCA. The scope of contracts to which DORA applies is broader than previous similar legislation, which was limited to outsourcing arrangements or cloud services. Therefore, organisations will need to ensure compliance with DORA in relation to a broader range of ICT services. All contracts for ICT services to which DORA applies must include certain contractual terms required by DORA. FS organisations need to review their ICT arrangements against the operational resilience requirements applicable to them and take steps to ensure compliance, including contract remediation exercises, if necessary.

Anthony Harrison reviews the latest data from the FOS, as well as an FCA proposal concerning a new trading platform.

FOS UPDATE

In a nutshell…

Recently published FOS data shows that complaints about fraud and scams, current accounts and credit cards are at record highs. Overall complaints received between July-September 2024 stand at 73,692, compared to 46,716 cases received in the same period during the previous year.

Further detail…

- **Complex scams on the increase:** The figures reveal that fraud and scams cases have now reached their highest quarterly level, with consumers lodging 9,091 complaints in the three-month period. That is significantly higher than the 6,264 new fraud and scam cases lodged in the same period last year. The rise in these complaints is partly due to the increasing complexity of the fraud and scam cases. Multi-stage frauds, where funds pass through several banks before reaching the fraudster, are also becoming more common. This is particularly prevalent in cryptocurrency investment scams, as well as 'safe account' scams – where people are cold-called by fraudsters posing as a trusted entity, such as their bank, and persuaded to transfer money to another account.

- **Credit card and current account cases at an all-time quarterly high**: In the three months between July and September 2024, there were 22,366 new credit card cases and 9,186 complaints about current accounts. This is a significant rise from the same time last year. For current accounts, more customers are falling victim to fraud and scams, and are also unhappy with the service their bank is providing. The vast majority of credit card cases are about perceived irresponsible and unaffordable lending.

Key takeaways…

Scams and credit card complaints have been a mainstay of the FOS data for many years, but the ever-increasing rise of these complaints increases pressure on FS firms to ensure that they continue to address such complaints promptly and fairly. Firms also need to reinforce internal systems and controls to keep pace with increasingly complex and sophisticated fraudsters. Further, It is notable that a large proportion of credit card and account cases are brought by professional representatives – they are now responsible for a third of current account complaints, and 85% of credit card cases. When a complaint is upheld, many of these representatives charge consumers a significant percentage of any redress awarded. It will be interesting to see how the FOS' proposed £250 fee for each case brought by a professional representative impacts the data going forward.

PROPOSED INTRODUCTION OF PISCES

In a nutshell…

The FCA has outlined proposals for a new platform - The Private Intermittent Securities and Capital Exchange System (PISCES) - on which shares in private companies will be bought and sold.

Further detail…

PISCES is intended to be a new type of trading platform that enables intermittent trading of private company shares using market infrastructure. It will use public market features such as multilateral trading, as well as private market features to give companies greater discretion over how and to whom their disclosures are distributed, when trading occurs, and which investors can participate in their trading events.

The FCA wants to create a regulatory framework which:

- Encourages and supports operator, company, and investor participation;
- Enables innovation and helps firms access capital, supporting growth in the UK economy;
- Accommodates different operator business models and service features;
- Addresses relevant risks proportionately while avoiding disproportionate regulatory burden and friction for companies and other participants; and
- Enables further change during the sandbox period to ensure the above objectives are met.

The regulatory framework for PISCES will differ from other markets. Notably, UK MAR will not directly apply to shares admitted to a PISCES platform in and of themselves. Market abuse rules would only apply in the limited circumstances where the PISCES share had an impact on the price or value of another financial instrument admitted to trading on a UK (or other in-scope) trading venue. Moreover, the FCA is not proposing to monitor PISCES company disclosures. However, it will monitor the overall functioning of the PISCES operator's disclosure rules and arrangements, as part of its monitoring of the effectiveness of the PISCES sandbox.

Key takeaways…

PISCES follows in the wake of a number of FCA reforms to the UK's markets – such as prospectus regime reform and greater freedoms for asset managers paying for investment research – with an aim to boosting competitiveness and growth. The FCA's comments on regulation have a particular emphasis on proportionality in overseeing the risk of potential harm. The sandbox results will be interesting in terms of whether a reasonable balance can be struck between promoting a more light-touch approach whilst ensuring market integrity and trust. The PISCES consultation closes on 17 February 2025.

Sébastien Ferrière reviews the feedback from the FCA's consultation on transparency in enforcement investigations, and FCA proposals on reforming transaction reporting.

TRANSPARENCY CONSULTATION FEEDBACK

In a nutshell...

Towards the end of last year, the FCA published the second phase of its consultation on proposals for an increase in transparency about its enforcement investigations – the so-called 'name and shame' proposals – and set out plans for further engagement after significant concerns were raised in relation to the original consultation.

Further detail...

Four significant changes have been made to the FCA's proposals in response to feedback:

- The potential negative impact on a firm would be explicitly considered as part of a public interest test - previously it was not included as one of the factors.
- Firms would be given 10 days' notice ahead of any announcement being made, rather than the 1 day notice period originally proposed. During this period, firms could make representations. If the FCA decides to make an announcement, a firm would then have an additional 48 hours' notice before it is published.
- The potential for an announcement to seriously disrupt public confidence in the financial system or the market has also been included as a new factor in the public interest test.
- The FCA has clarified it will not announce investigations which began before any changes to the policy come into effect, although it may reactively confirm investigations which are already in the public domain, where this is in the public interest.

The FCA considers that, if the proposals were to come into effect, they would only lead to additional proactive announcements of investigations into regulated firms in a very small number of cases. The FCA has committed to continue meeting with firms, trade associations, consumer groups, the legal community and others. The FCA Board is then aiming to make a final decision in the first quarter of 2025.

Key takeaways...

The modified proposals deal with some of the issues raised in the initial consultation, including concerns regarding reputational damage, lack of notice and potential adverse impacts on markets. This strikes a more reasonable balance compared with the initial proposals. That said, there remain significant reputational challenges for firms, not least that announcements of investigations into firms may be made early, despite the absence of proven misconduct – with the senior managers connected to particular businesses remaining identifiable on the Financial Services Register. Feedback on the consultation is due by 17 February 2025, with the FCA Board aiming to make a final decision on the policy in Q1 2025.

TRANSACTION REPORTING UPDATE

In a nutshell...

The FCA has outlined potential options for evolving the transaction reporting and instrument reference data requirements in a recent Discussion Paper.

Further detail...

Whilst the FCA recognises that the reporting regime works well – relying on transaction reports being complete and accurate to detect, investigate and prevent market abuse, as well as ensuring its decisions are based on data and market understanding – the FCA's market data needs have evolved since 2018. Through its supervision of the regime, the regulator has identified opportunities to improve the quality of data reported to it while reducing reporting burdens on market participants. In particular, the FCA has 2 main objectives:

- **Improving the usefulness of transaction reporting data through better data quality**. Poor data quality can hamper the FCA's ability to act assertively against market abuse, monitor the functioning of markets and make informed decisions. The regulator aims to identify and address areas where reporting rules and guidelines have contributed to inconsistent, incorrect or incomplete reporting. Improvements in data quality should also benefit firms, as they will reduce the time and resources spent on resolving errors, including often costly back reporting exercises. The FCA will also consider new rules, where necessary, to account for changes in markets.
- **Supporting the competitiveness of UK markets by ensuring requirements remain proportionate for firms.** The transaction reporting regime contains fields and requires processes that may present a disproportionate cost relative to the FCA's use of the data. The regulator will consider removing or amending these requirements where there is evidence this will result in reduced costs for market participants. The requirements should also facilitate developments in technology to lower costs and drive innovation.

Key takeaways...

The FCA has made it clear that it is not seeking change for the sake of change – recognising the investment by firms to prepare for the MiFID II transaction reporting regime, and the benefits of close alignment with international standards and other regulatory reporting regimes, including the EU MiFID transaction reporting regime. There are some encouraging noises with regard to removing and amending certain requirements for particularly costly reporting processes. However, it remains to be seen whether the time and resource required of relevant firms to implement and embed reporting rule modifications will be outweighed by the intended benefits. The deadline for responding to the Discussion Paper is 14 February 2025.

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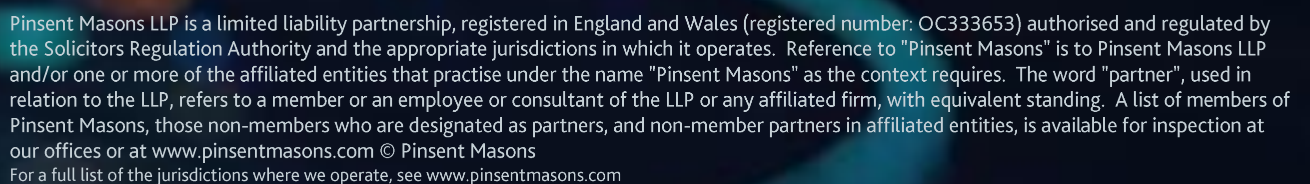

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